

2013-01-25

# Taking Inspiration: Talking to Songwriters About Copyright and Creativity

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Hemminger, P. (2013). Taking Inspiration: Talking to Songwriters About Copyright and Creativity (Master's thesis, University of Calgary, Calgary, Canada). Retrieved from <https://prism.ucalgary.ca>. doi:10.11575/PRISM/27972

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UNIVERSITY OF CALGARY

Taking Inspiration

Talking to Songwriters About Copyright and Creativity

by

Peter Hemminger

A THESIS

SUBMITTED TO THE FACULTY OF GRADUATE STUDIES  
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE  
DEGREE OF MASTER OF ARTS

DEPARTMENT OF COMMUNICATION AND CULTURE

CALGARY, ALBERTA

JANUARY, 2013

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## **Abstract**

In the debate surrounding contemporary approaches to copyright law, the voice of songwriters has been significantly under-represented. This thesis presents the findings of seven interviews with practising Western Canadian singer-songwriters regarding the use of pre-existing intellectual property in their creative process, as well as their understanding of and attitudes towards copyright law. These findings are placed within the context of current theoretical approaches to creativity, and are compared to the beliefs about creativity inherent in current copyright law. While the laws are based on an individualistic view of creativity, the songwriters themselves show a tendency to draw heavily from songs, film and other media when creating their works, and tend to view copyright itself as largely irrelevant to their creative habits.

## Acknowledgements

This thesis would not have been possible without the guidance and support of my supervisor, Prof. Richard Sutherland, nor could it have happened without the gracious participation of Tom Bagley, Lee Hutzulak, Doug McLean, Dan Mangan, Matt Masters, John K. Samson and Foon Yap.

I would also like to acknowledge the assistance of Keith Maurik, Ken Beatty, Toby Cygman and Kevin Andrechuk in helping to line up the interviews; Toby, Kevin, Sarah Sinclair and Heather McKenzie for their hospitality during the research process; Patrick Boyle for his help in technical matters; and Katherine Ziff for her enthusiastic support and editorial input.

As for moral support, there are simply too many names to list. In short, friends, family, co-workers and my cohort, you all helped to keep me sane during the writing process, and for that I am grateful.

To the staff at Vendome, thanks for putting up with me for so long.

Lastly, I would like to thank the Social Sciences and Humanities Research Council for their generous support of this project.

## **Dedication**

To my parents, for always tolerating my pop culture obsession—even if they don't always understand it.

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# Chapter 1

## Introduction: A Cautionary Tale

In their book *Creative License*, Kembrew McLeod and Peter DiCola (2011) describe the convoluted chain of songwriting credits behind Jay-Z's song "Takeover," from his album *The Blueprint*. Due to the standard practices that have developed around the business of clearing samples (fragments of recordings that are copied and often digitally looped or otherwise altered in the creation of a new track), it is not unusual to find a vast list of songwriters credited for the creation of a single song. If an artist and their label want to avoid the threat of a lawsuit, anyone whose music has been borrowed for use in the new song will likely end up credited, and "Takeover" is no exception, with co-writing credit granted to Grand Funk Railroad, The Animals, The Doors, KRS-One, David Bowie and Alan Lomax.

In McLeod and DiCola's retelling, they seem to see the last name on that list as the most ridiculous, and justifiably so, as Lomax's role in the creation of "Takeover" is about as tangential as possible. The renowned folklorist and ethnomusicologist recorded a group of workers singing a song called "Rosie" on Parchman Farm in the late 1940s. That recording found its way to the British rock group, The Animals, who created their own version of the song—a version that was eventually covered by Grand Funk Railroad. The guitar solo from Grand Funk's cover was then sampled by KRS-One for his hip hop classic, "Sound of da Police," from which producer Kanye West took an unaccompanied vocal when he created "Takeover." And while that sample contains none of the music from Grand Funk, The Animals or Lomax's recording, the copyright holders for each of those songs had to provide their permission, and were presumably paid a portion of any royalties earned by the song and the album that contains it. In other words, Lomax's estate likely received an income from Jay-Z's album because their ancestor recorded singers in a field—a valuable contribution to American cultural history, to be sure, but one only tenuously linked to the



success of *The Blueprint*.

McLeod and DiCola's point—that the requirement of tracking down copyright holders in order to publish sample-based songs amounts to a byzantine project that can only be undertaken by the wealthiest artists and corporations—is well made. However, it can also be argued that the most troubling name on the list of contributors to Jay-Z's "Takeover" is not there on account of the Lomax saga. David Bowie's credit comes not from a sample of one of his songs, but from a slightly less direct musical quotation. Mid-way through "Takeover," as Jay-Z is describing what he views as the less-than-impressive career arc of one of his hip-hop rivals, he emphasizes the word "lame" by singing it with the melody and cadence of the refrain from Bowie's "Fame." This repeats a couple of times (once using the word "fame"), and though it isn't a sample, the reference is obvious enough. By most reasonable standards, and this is something the authors do mention, such a usage—an allusion to a single line from another composition, which serves as a relatively minor part of the new song—would be a clear example of what American copyright law calls "fair use," an exception which is meant to provide artists, educators and other users of culture with a way to get around the formal permissions required by copyright, so long as the use is, as the name implies, fair (McLeod, 2007).

Yet, despite the fact that the "Fame" reference in "Takeover" doesn't necessarily require crediting Bowie as a songwriter as far as copyright legislation is concerned, some combination of West, Jay-Z and his label felt this was the safest course of action. In music, and pop music in particular, the legal precedents around borrowing from other artists are unclear at best and contradictory at worst, and as a result the industry's major players are reluctant to indulge in behaviours that could be considered even slightly risky (Lessig, 2004).

The industry's caution hardly seems misguided. Rightsholders in all mediums are becoming more aggressive regarding reinterpretations of their work. Whether it is a Canadian visual artist facing a suit for translating the lyrics of Van Dyke Parks into original paintings (Masnick, 2012a) or the estate of William Faulkner recently filing suit against the Washington Post and Sony Pictures for

using attributed single-sentence quotations from Faulkner’s work without first seeking permission (Masnick, 2012b), the legality of direct quotation or even indirect inspiration is less clear than ever before.

The benefits of expanding or limiting the role of intellectual property protection are currently being debated in any number of forums, from academic and popular publications to legislative forums, with issues as diverse as users rights, digital sampling and the very nature of human culture all appearing in the spotlight at various points. One area of the intellectual property discussion has been neglected to a surprising extent, however: the actual views and practices of artists. With a few exceptions, there has been little effort to speak to artists about how they engage with other works in their creative process, especially when that engagement is the form of inspiration, quotation or allusion instead of more direct practices like digital sampling.

The aim of this thesis, then, is to present the voice of those artists—in this case, songwriters—as they explain the role that the intellectual properties of others play in their creative process. As both producers and consumers of culture, the experience of these musicians provides an essential insight into the nature of creativity. And, while the view of creativity offered by these practising songwriters is often unclear and even self-contradictory, it presents an understanding of creativity that challenges some of the assumptions at the heart of most contemporary copyright law.

Specifically, these songwriters see themselves as part of an artistic ecosystem in which the borrowing of elements from other creative works (that is, artistic and non-artistic works that could be covered by copyright, whether or not they are currently covered by that law) is not just common, it is an essential part of creativity itself. In this view, originality is an overrated and misunderstood concept, and “original” creations tend to draw heavily from pre-existing works. If this view is generalizable (a claim that could only be made based on a much broader sample), it would be difficult to reconcile it with the existing legal structure in Canada and most other Western nations, where copyright has been designed to restrict the ability of artists to borrow from others without explicit (and often expensive) permission. In other words, the view presented by these songwriters illus-

trates a potentially dramatic gap between lawmakers and those who make a living from creativity when it comes to the notion of creativity.

## Chapter 2

### Literature Review: Copyright in context

In order to understand how these songwriters' views differ from that offered by current North American approaches to copyright, it is first necessary to understand the context of the current debate surrounding intellectual property, and copyright in particular. That means an understanding of both the law itself and, given that copyright is ultimately about legislating creative activity, an understanding of current philosophical views of creativity.

Neither of these is particularly simple, and neither is uncontroversial. However, the purpose of the following chapter is not to take a stance in the debate, but merely to provide context for the views of the songwriters that will follow in chapter four. That being the case, the discussion of copyright in particular should be seen as a history, rather than a critical analysis.

#### 2.1 The evolution of copyright

To paraphrase the Supreme Court of Canada in its decision on *Theberge v. Galerie d'Art du Petit Champlain Inc.*, the intent of copyright legislation in Canada is to find a balance between allowing access to cultural works and preserving an economic incentive in their creation (Vaver, 1983), a motivation that echoes the United States constitution's establishment of copyright as a tool "to promote the progress of science and useful arts" through a limited monopoly offered to creators (Lessig, 2004).

Striking a balance between the economic interests of creators and the societal benefits of access to the arts has been no simple matter, though. As legislation and international trade agreements seek to strengthen intellectual property rights through extensions of copyright's term, harsher penalties for violations and increased legal backing for protective measures like digital locks, a growing number of scholars and citizens have come to criticize such measures. Some scholars

cite the privacy concerns inherent in increased monitoring of the usage of copyrighted materials (Geist, 2005). Others decry the censure of creative activities that they see as inherent in the erosion of the public domain (Lessig, 2004; McLeod, 2007; Boyle, 2007; Vaidhyanathan, 2001). Advocates of audio collage techniques like sampling and its derivative, mash-ups, criticize fair use (in America) and fair dealing (in Canada) exceptions for failing to protect these new forms of cultural engagement (McLeod, 2005; Reynolds, 2009).

Without digressing too far into that debate, perhaps it is safest simply to say that the various factions involved have been quite vocal within popular media and other public forums, with each stressing the urgency of implementing measures compliant with their view of how modern societies should properly manage intellectual properties. One of their fundamental disagreements, though, seems to focus on the purpose for which copyright law was established in the first place.

The actual birth and evolution of copyright law and its related intellectual property rights is a complex process involving numerous statutes and treaties throughout numerous (primarily Western) nations, dating back to the 18th century Statute of Anne in England. As such, describing it in any depth is beyond the scope of this thesis, but understanding why the role of copyright is currently under debate requires at least some familiarity with its origins. What follows, then, is a simplified narrative.<sup>1</sup>

### 2.1.1 The Statute of Anne

Prior to the Statute of Anne, the closest approximations of what we now call copyright law in western Europe came in the form of printing monopolies granted to individuals or organizations (usually unions or guilds) for fixed durations. The purpose of these monopolies had little to do with protecting the rights of creators—in fact, one of the longest-lived monopoly grants was issued by the British Crown to the Stationers’s Company, a guild that did not allow membership to authors, while booksellers, rather than the writers of books, typically owned perpetual rights to the

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<sup>1</sup>This section borrows heavily from the Alex Guindon’s *A Very Short History of Copyright* (2006), along with Lawrence Lessig’s *Free Culture* (2004) and Martin Kretschmer and Friedemann Kawohl’s *The History and Philosophy of Copyright* (2004).

materials they sold. Instead, these monopolies were typically a means of restricting the production of politically problematic material by banning the use of printing presses by anyone aside from a handful of easily monitored universities and printers. There had already been legislation regarding other forms of intellectual property, namely patents to protect physical inventions (Guindon, 2006), but the idea of protecting words written by an author had yet to be discussed in legislation.

The Statute of Anne, which came into effect in 1710, marked a dramatic shift in the Western legal approach to copyright law. The very title of the bill identified it as an "Act for the Encouragement of Learning," a goal that would be achieved by creating a balance between the rights of creators and of readers. Authors would now be granted a 14-year monopoly on their works, during which time they could authorize (and benefit financially from) their publication. After those 14 years, the work would enter the public domain, allowing anyone to republish the work, build upon it or use it however they saw fit. This would not necessarily prevent the original author from profiting from their work after it entered the public domain—they would have as much right to do so as anyone—but the loss of the government-sanctioned monopoly would inevitably drive down the prices of works through increased competition.

While it resembled traditional folk culture, where attribution of authorship is neither necessary nor practical, this public domain was an entirely new legal entity. Folk stories do not have particular authors associated with them; the works arise out of tradition and exist without ownership—they can be used by storytellers, who may gain renown for their own version of the trials of Hercules, say, but no one can be said to own them. The public domain, on the other hand, does not strip a story of its authorship. The works of Arthur Conan Doyle, William Shakespeare and H.G. Wells are all in the public domain, which means any author has the right to create a story in which Sherlock Holmes and Prospero team up to defeat the subterranean Morlocks, and even to do so without giving a lick of credit to the authors from whom the characters have been borrowed if they so desired. It is still recognized that those characters belong, in some sense, to their original authors, but that ownership does not imply any special privileges, at least legally.<sup>2</sup>

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<sup>2</sup>There is another strain of authorship rights that would still confer certain privileges on the creators of a work even

This did not sit well with the publishers and book-sellers who had gotten used to profiting from their more permanent monopolies, and they successfully lobbied for an initial extension to the copyright term—works that existed prior to the statute would have a copyright life of 21 years, as opposed to the 14 for newly created works. As might be expected, these groups tried to establish an even longer hold on the works they controlled, arguing that the common-law practice of perpetual ownership by the publisher should pre-empt any legislated terms—that is, that once the authors’ ownership of works left the Statute of Anne’s legislated copyright period, they would revert not to some newly created public domain but to the system that had been established by common practice, wherein works were still owned forever by the publishers.

That argument was eventually rejected by the courts. If it had been accepted, performances or adaptations of the works of Shakespeare would currently only be allowed with the specific permission of a given publisher. Instead, writers and filmmakers are free to create as many high-school-set versions of Shakespeare’s comedies as they please, and our culture, presumably, is all the richer for it.

### 2.1.2 American copyright terms

Given the United States’ place of prominence in current international discussions regarding copyright law, no history of copyright would be complete without looking at its development in America.

Copyright was established in the United States with the *Copyright Act* of 1790. Like the Statute of Anne, the Copyright Act specifically presents itself as a tool to promote the advancement of society: Article I, Section 8, Clause 8 of the United States Constitution, commonly referred to as the “progress clause,” states that “Congress shall have the Power... To promote the Progress of Science and the useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” Unlike the “self-evident” truths of the *Declaration*

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after that work enters the public domain. That strain, known as moral rights, will be discussed in more detail later, as it emerges from European rather than British and American tradition.

of *Independence*, the rights granted by the *Copyright Act* are a creation of the government. It is a social contract: Authors<sup>3</sup> are given the economic benefit of a monopoly in order to encourage them to create new works, with the public eventually receiving the benefit of a robust public domain.

The term of that monopoly was initially a relatively brief 14 years, with the option to renew the work for another 14 if so desired. In 1831, the term was extended to 28 years, again with the option to renew the work for another 14 years, and the renewal length was extended to 28 years in 1909. In other words, over the course of just over a century, the minimum and maximum amount of time that a work would remain in copyright were both doubled—a substantial benefit to the owners of copyrighted works, given that these extensions were applied retroactively, but a loss to supporters of a strong public domain. And that was just the beginning.

The next expansion of copyright's terms took place in 1976, with copyright now lasting for the life of the author plus 50 years, or in the case of works owned by corporations, 75 years from the creation of the work. This was again expanded in 1998 with the Copyright Term Extension Act, otherwise known as the Sonny Bono Act, which increased the term of American copyrights to 70 years after the death of the author for works that were owned by their author, and either 95 years after publication or 120 years after creation for all other works. As a result of this last extension, no new works have entered the American public domain since 1998, and none will until 2019 at the earliest, assuming the terms remain at their current lengths (Lessig, 2005)

### 2.1.3 What copyright covers

Knowing the length of copyright's terms is all well and good, but this discussion hasn't yet covered the actual protections afforded by copyright. While most people have a general sense of what these terms are, the specifics often aren't particularly well understood—as McLeod and DiCola discovered in their survey of musicians and music industry professionals, even those who deal with copyright law regularly as a part of their job tend to be at least somewhat confused about

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<sup>3</sup>Though the conversation is often framed this way, it's a little misleading to say that the author is allowed to profit from the work for the duration of the copyright. The author isn't always the owner of the copyright—as we will see in our discussion of the modern music industry, authorial copyright is actually quite rare.



what they are actually allowed to do with other people's works (McLeod & DiCola, 2011).

At its most basic, copyright is what its name implies: It is the exclusive right to copy a particular work, or put slightly differently, a restriction on the rights of anyone but the copyright holder to make a copy of that work. This right is typically granted to the author of a work, though there are exceptions, such as when a work is created as a part of one's employment, in which case a contract may specify that the copyright goes to the employer. As that implies, copyright is a transferable right, meaning that a creator can sign away their copyright in one of their works to other individuals, or even to corporations. The signing away of these rights is not at all a rarity; it has long been the standard practice in the music industry, for example, as will be discussed shortly. So long as a work is protected under copyright, no one is allowed to make a new copy of that work without the permission of the copyright holder, and civil or even criminal charges may result from infringement (Guindon, 2006).

While copyright does provide a monopoly on use, that monopoly is not absolute. The most famous exception to copyright (in the United States, at least) is the claim of "fair use," which again is pretty much what the name implies: According to U.S. legal doctrine, there are certain times where allowing people to make copies of protected works is considered fair. One caveat about fair use is that it is only invoked after an accusation of copyright infringement—it is strictly a defensive right, and must be successfully argued in order to be effective. When considering if a particular usage is fair, the courts will look at a number of factors, including the kind of usage, whether commercial or noncommercial, the portion of the original work used, and the availability of alternatives to the copied work (Marshall, 2004). Each of these factors are considered individually, and none of them are an absolute requirement: noncommercial works may be seen as more fair in general, but commercial works can also be deemed fair. Meanwhile, quoting large passages of text for the purpose of education or criticism may be seen as fair, but quoting a few lines of song lyrics may be seen as excessive borrowing and deemed unfair—and in the case of sampling in particular, some rulings have stated that there is no amount so small as to be fair, and that any

usage of sampling must be cleared, with no exceptions.<sup>4</sup>

It should be noted that, contrary to a common phrasing, reusing materials from the public domain is not an example of fair use. Fair use is a defence for the appropriation of copyrighted materials, and is only invoked once legal proceedings have already been initiated by a copyright holder. Materials in the public domain, by definition, have no copyrights; their usage and re-appropriation does not need to be defended.

#### 2.1.4 Copyright in Canada

While American copyright laws tend to be discussed more, there are important differences between U.S. and Canadian copyright laws. Perhaps the two biggest differences are the inclusion of moral rights among the rights granted to Canadian artists, and the more limited nature of the Canadian equivalent to fair use. That latter distinction will be discussed first.

##### Fair Dealing

Like the American legislation for fair use, Canadian law details a number of situations wherein its fair dealing exception applies. Unlike the American list, however, which lists a number of examples while allowing the courts to read the exception broadly, the Canadian listing is exhaustive. Only usage for research or private study, criticism or review, or news reporting were allowed under fair dealing until the amended copyright legislation that passed in 2012 added an education and a parody category to this list. The Supreme Court of Canada has specifically instructed that courts interpret these categories broadly, allowing that research in particular can include a wide variety of acts done in an assortment of contexts, including for-profit work, but activities that cannot be seen as falling within those categories are not allowed.

Simply falling within one of those categories is not enough to guarantee that a usage qualifies for the fair dealing exception, though. Once its category has been established, the courts must

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<sup>4</sup>The case law regarding sampling is notoriously inconsistent, with *Campbell v Acuff-Rose Music* showing that sampling for the purpose of commercial parody is allowed, while other case law has equated all sampling with stealing (McLeod & DiCola, 2011). As the authors argue in *Creative License*, this has led to the creation of a “clearance culture” when it comes to sampling, as the courts are seen as too unpredictable to chance.

determine that the usage was fair. To do this, the Supreme Court established a list of six criteria to be considered. A dealing does not have to satisfy all of these criteria, nor are the criteria to be seen as exhaustive;<sup>5</sup> the factors must be weighed by the courts in each situation. These categories are:

1. The purpose of the dealing: This asks whether the dealing falls under one of the five excepted categories. Of the six criteria considered, this is the only one that is mandatory.
2. The character of the dealing: The courts must consider how a work was used—how many copies were made and how widely they were distributed, whether the copy was destroyed after its use, and how that usage compares to general industry practices.
3. The amount of the dealing: This portion questions how much of the original work was reproduced in the usage. Generally speaking, reproducing smaller portions is seen as more fair, but this is not always the case; there are times when reproducing a work in its entirety could still be viewed as fair, depending on the purpose of the dealing.
4. Alternatives to the dealing: If there were non-copyrighted alternatives that could have been used in place of the copyrighted work, a dealing may be seen as less fair. For example, quoting from a work in order to analyse or criticize that work will likely be seen as fair, as substituting a non-copyrighted quotation could not possibly serve the same purpose. Playing a certain song in the background of a film to establish a certain mood may be seen as less fair, given that other, non-copyrighted music could have been used to very similar effect.
5. The nature of the work: Copying a work that is widely commercially available is likely to be seen as less fair than copying an unpublished work, or one that is

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<sup>5</sup>While the actual law establishing fair dealing provides an exhaustive list of categories, the six criteria are the creation of legal interpretation rather than legislation, hence the allowance for wiggle-room, as it were

difficult to obtain through traditional channels. However, if the work is not available because it is classified, or because the author does not wish it to be available (as per their moral rights), this could count against a dealing's fairness.

6. The effect of the dealing on the work: If a dealing will adversely effect the market for a given work, that dealing may be seen as less fair. Again, though, this must be considered in context. A usage intended for criticism may have a negative effect on the market for a work by convincing the public that the work is of poor quality, but considering such a usage unfair would defeat the purpose of including criticism as a category for exception (Murray & Trosow, 2007).

### Moral rights

The second major difference between Canadian and American copyright law is the former's inclusion of moral rights, a set of rights that are completely distinct from the economic rights imbued by copyright, though they arise from the same act. Unlike copyright, moral rights belong only to real human authors of a given work—they cannot be held by a corporation, nor can they assigned to anyone but the author, with the exception of the author's heir. They can, however, be waived, if the artist so desires (Murray & Trosow, 2007; Rushton, 1998).

There are three moral rights granted by Canada's Copyright Act: the right of integrity, assuring artists that their work will not be mutilated to their detriment; the right of attribution, providing the choice for the artist to have their name, a pseudonym or no name at all attached to the work; and the right of association, which allows artists to prevent their work from being associated with causes or organizations that they would rather not be associated with (Murray & Trosow, 2007). These moral rights, which last as long as the economic copyright in a work (currently, the artists' life plus 50 years), are not unique to Canada, but they certainly aren't universal (Murray & Trosow, 2007). In France, moral rights exist in perpetuity, and are granted even to works not created in that country; in the United States, moral rights of authors are nonexistent.<sup>6</sup> This is why, when media

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<sup>6</sup>There is a slight exception. Though not actually called a moral right, American artists were granted "Termination

mogul Ted Turner decided to unleash his film colourization “crayons” on John Huston’s film *The Asphalt Jungle* in the late 1980s, Huston’s heirs were able to prevent the release of the colourized versions in France, but had no recourse in the U.S. (McLeod, 2007).

Because of their absence from American law, the role of moral rights is often minimized in American copyright scholarship. When they do appear, it is usually in the space of a few sentences or at most a paragraph within an entire book, and even then it tends to be in exceedingly unflattering terms. In the American view, moral rights “tend to limit fair use, revisions, and parody” (Vaidhyathan, 2001, p. 28). They boil down to a means of controlling one’s image and exempting it from criticism (McLeod, 2007, p. 65). Unlike copyright, which was ostensibly created to promote creativity by protecting the fruits of intellectual labour from piracy (and so ensuring that future creativity would still be possible), moral rights aren’t meant to inspire future work. This makes them a force for control of the intellectual landscape, and thus, if one believes the argument that control of the past is equivalent to control of the future (Aung-Twhin et al, 2009), a potential threat to future creativity.

In Canada, on the other hand, moral rights have only been strengthened since the 1982 decision in *Snow v. The Eaton Centre Ltd.* affirmed their place in the nation’s intellectual property landscape.<sup>7</sup> Although a subsequent trial did place a higher burden of proof on artists claiming prejudicial damage to their reputation when enforcing the right to integrity of their work, this burden does not apply to “fixed” media, meaning sculptors, painters and etchers have complete protection from any physical re-appropriation of their work with no allowance for fair dealing (Murray & Trosow, 2007). Authors of other media, such as songwriters, have slightly weaker rights, and must prove that a modification of their work is prejudicial, but as worded this is still significant: any re-

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rights” in 1978, which allow them to regain ownership of the copyrights to works that they sign away after 35 years. Like other moral rights, termination rights are non-transferable and cannot be held by corporations. Their actual strength is currently being tested in U.S. courts, as a number of musicians try to reclaim the rights to their late-’70s works, with their record labels claiming that the termination rights shouldn’t apply, as the albums in question were created as works for hire (Rother, 2011).

<sup>7</sup>In short, the case focussed on *The Eaton Centre*’s addition of decorative ribbons to a sculpture by Michael Snow as part of a Christmas campaign. Snow viewed the ribbons as a defacement; the Centre’s view was that their ownership of the statue and the temporary nature of the alteration both made the display permissible. The courts sided with Snow and ordered the ribbons removed (Vaver, 1983).

broadcast or alteration of the work that could be seen as defamatory, even if covered by fair dealing on the copyright side, could theoretically be construed as a “mutilation” in a moral rights case. As yet, though, there hasn’t been a major Canadian court case about the moral rights of songwriters.

### 2.1.5 Copyright in the music industry

Although it was originally meant to cover only written works, as technology has allowed for the fixing and broadcasting of an ever wider variety of media, copyright has had to contort itself to encompass a wider range of activities. Each medium has its own peculiarities, and music is no exception. The amount of rights involved in a recorded musical performance are fairly staggering.

There is, of course, the right to the underlying composition, which is held by the songwriter or songwriters unless they’ve assigned it to someone else, which is often a stipulation in recording contracts (Lessig, 2008). This right is treated in much the same way as the right that a novelist holds in a book they author: If someone else wishes to reproduce the work, they first require permission from that author. For music, though, there is also a performance right on top of this, thanks to a precedent set in mid-19th century Paris when a group of composers filed suit against a café after recognizing their songs being played by the house orchestra (Laing, 2004, p. 71).

It doesn’t end there, though. The act of recording a performance brings along new rights. Producers were given ownership over the recordings they made, giving them control over the mechanical reproduction of that recording, and eventually control over the broadcast of that recording. They aren’t the only ones with a stake in the recording, though—Canadian law holds that performers are also entitled to receive royalties when a work they perform on is broadcast, with 50 per cent of that royalty going to the producer and the other 50 per cent to the performers (Kretschmer and Kawohl, 2004)

Still more rights are involved when newer technologies are added to the mix. Filmmakers and television studios must deal with a synchronization right in order to use music in their films, and the rates for broadcast versus fixed media can be very different, forcing some television shows to choose between coughing up vast sums of money or choosing a different soundtrack when putting

out a DVD release of their show. And once the internet becomes involved, legislation becomes muddier still as lawmakers struggle to capture the nuances surrounding terms like “performance,” “broadcast” or even just “copy,” all of which are much less clear-cut in an on-demand digital world (Toynbee, 2006).

Understanding the exact nature of all of the performance rights, mechanical rights and neighbouring rights involved in recording music is difficult even for professionals who have dedicated their lives to sorting through these legal tangles. As complicated as it gets, though, talking about copyright is a cakewalk next to discussing creativity.

## 2.2 Creativity: What is it?

For a subject that is discussed in fields as far-flung as psychology, intellectual property law and literary theory, there is surprisingly little agreement on what is meant by “creativity”. Pinning down its essence seems every bit as difficult as pinning down the essence of free will—great minds have been attempting it for centuries, and yet there still is no agreement.

Still, it will be difficult to talk about the role of works in a songwriter’s creative process without having some way to talk about creativity. This can be tricky. Even something as seemingly simple as a definition has proven next to impossible to settle on. There do seem to be at least a handful of elements that are widely (though not universally) agreed upon, however, and that will provide a foundation for this conversation.

### 2.2.1 Common elements of a definition

As a starting point for this discussion, I will use Phillip McIntyre’s definition of creativity (2006), which states that “creativity is an activity whereby products, processes and ideas are generated from antecedent conditions by the agency of someone, whose knowledge to do so comes from somewhere and the resultant novel variation is seen as a valued addition to the store of human knowledge” (McIntyre, 2006, p. 202). McIntyre’s definition was originally offered in support of

a particular view of creativity—namely the systems view, which will be explained in more detail shortly—and so should not be seen as an impartial one. However, it touches on a number of points that tend to come up in many such definitions (Mumford & Gustafson, 1988; Torrance, 1988; Nakamura & Csikszentmihalyi, 2001; etc.), and while other definitions may disagree on the relative importance of these elements, it is illustrative of the difficulty inherent in pinning down a term like “creativity”.

Of the elements in McIntyre’s definition, perhaps the most straightforward is that it requires that something be generated. The definition is rather flexible in terms of just what that something is. It doesn’t have to be something physical, or fixed. Presumably, a spoken statement or even an unspoken thought can be the result of creativity, and so can a stone sculpture, a painting or even a building. This is particularly relevant to music, where the actual creative product, the sound, is entirely ephemeral. It can be recorded and reproduced and transcribed into various notations, but the actual song remains something separate from any of those physicalizations. If this weren’t the case, then cover songs, which have been known to change or entirely eliminate lyrics and to significantly alter melodies, arrangements, tempos and key signatures, could not exist.

The next requirement of McIntyre’s definition is the requirement that the *thing* that is generated must be a novel variation, and not just a repetition of what has come before. This one is trickier, as definitions of novelty are by no means universal. Imagine, for example, a recipe for soup. A master chef comes across the recipe, and after trying it for the first time, decides it needs a particular spice to complete the dish. Is his addition enough to consider his recipe new? What if he also replaces the potatoes with sweet potatoes, the onion with shallots, and the chicken broth with beef broth? What if he replaces none of those and doesn’t add any new spices, but simply uses a pinch more salt than the original recipe called for? Which, if any, of these situations leads to a recipe the chef can call his own?

The issue of novelty often comes into play in discussions of intellectual property law. It is at the foundation of much of the controversy surrounding the use of sampling in popular music, and is a



consideration in the exceedingly complex world of patent regulation, which won't even be touched on here. McIntyre's definition does state that the novel *thing* is not made *sui generis*—it comes from antecedent conditions, not from a vacuum. The difficulty is in determining exactly when a work changes from being derivative to innovative, or creative—but that threshold, whatever it may be, must be crossed.

Next, the novel thing must also have value. This does not necessarily correspond with use value, or economic value—after all, there have been many “creative” acts that are not particularly useful on the surface. There is even a common pejorative use of the word that points towards creativity as being the opposite of useful, describing an impenetrable painting or excessively circuitous solution to a problem by saying “well, it's certainly creative...”

Still, there does need to be something to distinguish creativity from random creation. A computer randomly generating a string of characters will almost certainly produce something novel, but the output it would produce is not what would traditionally be described as creative, as it would not add anything to “the store of human knowledge.”<sup>8</sup> For it to be truly creative, it would need to solve a previously impossible problem, perhaps, or express something in a unique way, or challenge a conventional paradigm.

The obvious question here is, who gets to decide what is valuable? In some cases, that can be instantly apparent, but more often than not, particularly in artistic circles, valuable contributions are not recognized until years after they have been made. A popular example is that of Vincent Van Gogh, who did not sell a single painting in his lifetime. In other words, for as long as Van Gogh was creating art, not a single person (aside from himself, presumably) saw any value in his paintings. It wasn't until after his death that art collectors and historians were able to judge his compositions and find enough creative value that he is to this day held up as one of the all-time great artists. The contributions of his art were not immediately apparent.

That isn't to say that creativity necessarily requires a level of skill on par with Van Gogh.

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<sup>8</sup>Even this statement is potentially controversial, as the generation of random numbers has itself been a tool in avant-garde art for decades.

Certainly the study of creativity has traditionally looked at the most extreme cases of creativity that it could find, the individuals who drastically redefined the way we see the world around us (Feldman, 1988; Gruber & Davis, 1988). But the creative act also takes place on a smaller scale, and the usefulness or value of the act could be something as small as bringing a smile to one person's face, or even self-satisfaction. All of which makes discussion of this third requirement of creativity particularly controversial.

All of which is to say that even a definition that seems on the face of it relatively uncontroversial is actually fraught with difficulties. A creative act, to paraphrase McIntyre, is an act that leads to the generation of a thing (of whatever sort) that possesses novelty (however we define that) and has value (of some sort, to someone). This is a frustratingly vague definition, and things will only get more controversial from here.

### 2.2.2 Some disagreements

Once the broad parameters of what can be considered creative have been sketched, there is still the even less understood issue of where that creativity comes from. McIntyre's definition has it coming about as a result of "the agency of someone," but even this, as we will see soon enough, is not a universally agreed-upon truth.

There seem to be as many theories of creativity as there scholars in the field. However, it is possible to lump together a number of theories based on the amount of power they give to the individual creator. On the person-centred end of the scale, we have those theories that see the artist or creative individual as the crux of the creative act, bringing new ideas forth out of nothingness. On the opposite end, there is the notion that the individual has no will whatsoever in the creation of new ideas, and that the creation of ideas takes place of its own accord. As you've likely intuited, neither view is without its problems.

## Individual creativity

Finding someone who truly believes that new ideas or works can spring forth from a void is next to impossible in academic circles, but the notion has some cachet in the world at large. One need only look at the lawsuits that inevitably spring up around pieces of popular entertainment, claiming that a certain book or film or video game simply must be an example of plagiarism because it contains X, Y and Z similarities to a work by the plaintiff. These lawsuits seem to say that if a work bears any resemblance to something that came before, then it isn't an original work, and its creation should be seen as a criminal rather than creative act.

This view is very much in line with what McIntyre describes as “the Romantic view of creativity,” which “is most often seen as one where a creative person, operating under some form of mystical inspiration of mind or spirit, is not regulated by external phenomena but is an autonomous self who is expressive of their own free will” (McIntyre, 2006, p. 202). Western copyright law implicitly supports this Romantic view by treating the fruits of creative and intellectual labour as property that can be owned, and that must be protected from unauthorized reproduction and other misuse. By viewing creativity as beholden to individuals (or in the case of some media, like film, groups of individuals) and putting the threat of legal and economic sanctions behind accusations of plagiarism, these laws seem to come down squarely on the individualist side of the creativity debate.

While it is popular with the public at large and reflected in the legal system, this view has very little traction in the academic world. Instead, the farthest one tends to see on the side of individual creativity is something like the view presented in Bloom's *The Anxiety of Influence* (1973). In that work, Bloom distinguishes between “weak” poets, who are overwhelmed by the influence of the poets who inspired them to write in the first place, and “strong” poets who push past those influences and eventually come to dominate them.

To borrow Simon Reynolds' summary of Bloom's “Freudian-mystical account,” “the resulting Oedipal struggle entails the younger poet (who will have been initiated, turned on to the glory of

poetry by a primal encounter with the elder's word) swerving from the ancestor's style, wilfully misreading it or doing violence to it in some other way... A titanic psychological struggle to self-birth oneself as an artist is required before the descendant ceases to ventriloquise the dead elder and find his own voice." (Reynolds, 2011, p. 177)

The terms of this "battle" and the very title of Bloom's work show a distrust of borrowing too directly from the poetic past. The strong poet must do what he can to misrepresent and thus dominate the past. "The history of fruitful poetic influence," he says, "is a history of anxiety and self-serving caricature, of distortion, of perverse, wilful revisionism without which modern poetry as such couldn't exist." (Bloom, 1973, p. 32). Early in the work, Bloom even speculates that "[really] strong poets can read only themselves" (p. 19), seemingly arguing against the role of influence in the work of the giants of poetry.

But it would be a mistake to say that Bloom sees the creative individual as one who must entirely resist the influence of their forebears. Influences properly integrated and overcome are necessary to the poet finding their voice, as "[p]oetic influence need not make poets less original; as often it makes them more original, though not therefore necessarily better" (p. 7), and "even the strongest poets are subject to influences not poetical" (p. 11). Midway through *The Anxiety of Influence* he even argues "We need to stop thinking of any poet as an autonomous ego, however solipsistic the strongest of poets may be" (p. 91).

What places him on the individualistic side of the spectrum is his view of creativity as a battle between the new poet and the creative past. In this view, only one side will emerge victorious. He does hint at a potentially more collaborative approach, noting that "Shelly speculated that poets of all ages contributed to one great poem already in progress" (p. 19), but Reynolds is not mischaracterizing Bloom's view of creativity when he calls it "a titanic... struggle."

A more typical view of creativity is presented by Ruth Richards, who views the creative genius not as someone "standing alone, aloof, and different from everyone else, in a separate universe of thought and expression. Rather, here is a figure atop a pyramid of potentiality, representing a

myriad other people, crowded along the busy slopes on all heights and sides, the great many more who just missed” (1996, p. 52).

The creative genius in this view is not someone who possesses more of some mysterious quality called creativity than anyone else. Instead they are simply someone with the right balance of attributes at the right time, having acquired the right knowledge and the right skills in the right environment to put together something new. Richards likens it to chaos theory, describing how “[n]ew information arrives at the creative mind, it accumulates, it jostles about, it seeks new configurations. Suddenly, as with the critical snowflake that causes an avalanche, the critical fact arrives [and] the creative mind buckles, jostles, and reforms itself” (Richards, 1996, p. 50-51).

Richards’ description of creativity positions the creative individual as very much a part of the world. “[T]he creator and the surrounding world of information are in constant exchange and in unstable equilibrium” (Richards, 1996, p. 54), and it is the particular combination of information and experiences that allows the creative moment to occur. The individual is still the locus of creative activity, but they are viewed as part of a larger system.

### Creativity as a system

As useful as it is to think of the creative individual as part of a system, there are those who think this view does not go far enough. Instead, the argument is made that creativity itself only exists at the systems level, and that describing an individual as creative does not actually make sense in itself.

Much of the foundation for this view can be found in Howard Becker’s *Art Worlds* (1984), which states in its opening paragraphs that “All artistic work, like all human activity, involves the joint activity of a number, often a large number, of people... [and] the work always shows signs of that cooperation” (Becker, 1984, p. 1). Becker is here positioning the artist within a web of influence, not just in terms of the artists that precede them, but in terms of the very structure of society. A painter, for example, is not limited (or inspired) only by the painters who came before, but by the choices of those who manufacture paintbrushes, paint, easels, and canvas. Their

creativity is shaped by market demands past and present. It embraces or reacts against lessons learned and decisions made by painters throughout the ages, by the requests of their patrons, if they have any, and of the patrons of artists past. In short, “works of art... [are] joint products of all the people who cooperate via an art world’s characteristic conventions to bring works like that into existence” (Becker, 1984, p. 35).

Already this view seems to remove a great deal of agency from the creative individual, but a true systems approach goes even further. As Mihaly Csikszentmihalyi says in his “Society, culture, and person: a systems view of creativity,” “...we need to abandon the Ptolemaic view of creativity, in which the person is at the centre of everything, for a more Copernican model in which the person is part of a system of mutual influences and information” (Csikszentmihalyi, 1988, p. 325). To reach this conclusion, Csikszentmihalyi first questions where creativity is actually located. Rather than finding it in the person or in the work they created, as in “all the definitions of creativity of which I am aware” (Csikszentmihalyi, 1988, p. 325), he argues that discussions of creativity are meaningless without looking at a broader “social and historical milieu”.

The reason for this is that “[i]t is impossible to tell whether or not an object or idea is creative by simply looking at it” (Csikszentmihalyi, 1988, p. 326). If creativity existed solely within an object or its maker, he argues, then we should be able to look at that person or object in isolation and make some sort of judgement about how creative they are. The example of the art forger puts the lie to this belief, though. “The two canvases, the original and the forgery,” Csikszentmihalyi points out, “are completely indistinguishable. Does it follow from this identity between the two products that Rembrandt and the forger are equally creative, or that the two paintings are equally creative?” (Csikszentmihalyi, 1988, p. 326) It seems obvious that the answer is no, but the only way to actually identify this difference is to look at what Csikszentmihalyi describes as the “domain,” the existing symbol system in which the individual operates. If everything the artist is doing already exists within the domain, then the element of novelty is nonexistent, and so, too, is creativity.

As for how the domain is established, that is the role of the “field.” Csikszentmihalyi somewhat

tautologically defines the field as “all those persons who can affect the structure of a domain” (Csikszentmihalyi, 1988, p. 330) For the world of painting, this would include (to list a handful of his examples) art teachers and historians, collectors, critics, and fellow artists. Obviously, these groups do not meet in any formal way to decide which artistic practices and beliefs will become part of the domain—the process is a fluid one, and debate over exactly what should be included is a constant part of the system.

It is only in the interplay between these three elements—the individual, the domain, and the field—that creativity can actually be discussed. The individual uses their knowledge of the domain to decide which elements to embrace and which to challenge; the field determines whether the changes introduced by the individual are useful; and the domain is then readjusted to include any new innovations. Without all three parts, creativity could not occur.

Phillip McIntyre (whose definition of creativity was cited at the beginning of this section) has helped to flesh out Csikszentmihalyi’s systems model of creativity in the context of popular music. The most important thing to keep in mind, he points out, is that “[t]he systems model proposes that the confluence of a number of factors must be in place for creativity to occur, and sees the creativity resulting from a complex process that is less individual-focused than systemic in operation.” (McIntyre, 2006, p.41).

To show this, McIntyre uses one of the most famous examples of supposed spontaneous creation in contemporary popular music—that of the genesis of the Beatles’ “Yesterday.” According to popular legend, McCartney awoke one morning with the fully formed melody of “Yesterday” running through his head. Believing it to be an already-existing song that he just couldn’t place, he spent the next weeks trying to sort out where he had heard the song. He played it for friends and fellow musicians, with makeshift lyrics to carry the melody (with “scrambled eggs” taking the place of “yesterday” as the refrain), until eventually coming to the conclusion that the song was in fact his own creation, and setting down to finalize its lyrics and arrangement.

This sort of story (other examples include Samuel Coleridge’s claim that his “Kubla Khan”

appeared to him in an opium-enhanced dream, and Mozart's alleged ability to conjure melody and harmony with no conscious effort) is often used as proof of the "lone genius" model of creativity. McCartney's mind, seemingly with no outside input, assembled a song that would end up as one of the most-covered songs ever recorded, an act of creativity so complete that it startled even the artist.

McIntyre sees the act differently. Even granting that McCartney believes "Yesterday" emerged fully formed from his creative unconscious, that was neither the beginning nor the end of the creative process for that song. As he points out, the systems view requires that "immersion in the domain... is a prerequisite for creativity in any domain and is thus more fully characterised as part of the creative act" (McIntyre, 2006, p. 205). This means that the time McCartney spent in his youth hearing his father play the standards of his time—and all of his subsequent exposure to popular music—should be seen not as a precursor to the writing of "Yesterday" but as an actual part of its creation. Those songs provided a framework of melodies and chord progressions in which "Yesterday" made sense, and were such obvious precursors that McCartney assumed the melody was one of theirs—requiring the input of esteemed members of the relevant field to establish his own creativity.

He may not have been entirely wrong, either. McIntyre cites Ian Hammond's argument that the chord progression of "Yesterday" follows Ray Charles' version of "Georgia on My Mind," with the new song's melody following the bass line of the original song. Hammond says, and McIntyre emphasizes, that this doesn't make "Yesterday" any less of a "completely original and individual" tune (McIntyre, 2006, p. 204). What it does is extend the process of creation past McCartney's dream, establishing it as "another step in that process of transformation or recomposition where all songs can be seen as being antecedently linked in one form or another to other pre-existing songs" (McIntyre, 2006, p. 204-205), or to put it in Csikzentmihalyi's terms, showing the powerful link between the creative act of the individual and their exposure to the relevant domain.

The song then went through more revision, with McCartney choosing a lyrical mood that suited



his view of the song as stemming from the tradition of standards, and consultation with an arranger to determine how best to integrate new elements (strings, specifically) into the composition. In short, the systems view shows that the creation of “Yesterday” wasn’t some mysterious, impenetrable and entirely individual process. “It was instead the result of a long and often arduous but nonetheless highly explainable process springing from McCartney’s deep well of experience, his intensive immersion in the domain of popular songs, and the product of long reflection and persistence” (McIntyre, 2006, p. 215).

### Creativity as a myth

The systems model may downplay the role of the individual in the creative process, but it does still acknowledge the existence of the creative individual. It should be noted that there are some schools of thought that go even farther, essentially arguing that the idea of the creative individual is a myth—or, at best, an illusion. To call such arguments novel seems almost ironic, but a discussion of creativity would hardly be complete without at least addressing these views.

The most commonly raised formulation of creativity as myth is also the most easily dismissed, and it is perhaps telling that it is difficult to find a scholar who raises the argument for any reason other than dismantling it. In this view, the fact that seemingly all artwork can be traced to specific antecedents in one way or another (as McIntyre stated) is used as proof that no art is truly new. All new works are seen as recombinations of what’s come before, and the lack of novelty means that creativity simply doesn’t exist. To quote Mark Twain in a letter he wrote to Helen Keller regarding accusations of plagiarism lobbied against her, “the substance, the bulk, the actual and valuable material of *all* human utterances—is plagiarism” (Usher, 2012), and anyone who asserts otherwise is essentially believing in a quaint myth.

The trouble with this view is that it is, on its face, simply unbelievable. A quick glance around any area where humans live will show the fruits of human ingenuity. Whether those products are the result of moments of genius from highly talented individuals or of the gradual refinement of ideas through the interaction of self-organizing systems, the fact remains that they exist, and at one

point or another in history, they did not. The objection raised by this argument seems to be more a matter of definition—it holds the concept of novelty to a standard that is simply impossible to reach. Just because a car in many ways resembles a horse-buggy does not mean that the two are the same thing, and understanding how one led to the other does not do away with the fact that a change took place.

A much more intriguing view comes from Susan Blackmore, building on an idea introduced by Richard Dawkins in his *The Selfish Gene*. According to Blackmore's summary, Dawkins spends the bulk of the book arguing for the "selfishness" of genes, not in some conscious sense, but in that each individual gene succeeds based on its ability for replication and nothing else. Unlike views that tended to look at organisms as a whole to understand evolutionary processes, *The Selfish Gene* argues that the best way to make sense of biological processes is to look at the smallest unit capable of replication, and that the "selfishness" of genes was more than adequate in explaining all of the diversity found in life through a process of mutation, selection pressures and reproduction (Blackmore, 2000)

Late in the book, Dawkins clarifies that, while he has been talking about genes, those three processes would work for anything capable of self-reproduction and facing selection pressures. He sets up the hypothetical idea of a sort of cultural or intellectual replicator, which he calls a meme, arguing that such a unit could theoretically form the basis for a study of human culture. Though only intended as a hypothetical to illustrate a point, Blackmore runs with this concept in her *The Meme Machine*, going into great detail on exactly how these self-replicating memes could explain everything from the rapid growth of the human brain in a relatively short evolutionary timespan, to religion, alien abduction lore and the concept of self. In her view, these are all shaped by the appearance of memes (defined, basically, as things capable of being imitated) as a "second replicator," one that is in no way subservient to genetics (as is often thought) but whose speedy replication and mutation make it a powerful presence in the modern landscape.

According to Blackmore, one of the consequences of this view is that the primacy of memes

severely limits the freedom of humanity. The human brain is essentially a breeding ground for memes, similar to the primordial pools in which life forms originally appeared, competed and propagated. And like those pools, humans have no control over what appears and what succeeds—even the idea of a self is an illusion that arose because of its ability to promote the spread of memes. What we think of as the fruits of human ingenuity instead stem from the competition between these memes, with selection pressures based on what reproduces the most efficiently, not what is most truthful or beautiful or useful for humanity. As Blackmore puts it, “The generative power behind... creativity is the competition between replicators, not a magical, out-of-nowhere power such as consciousness is often said to be. The creative achievements of human culture are the products of memetic evolution, just as the creative achievements of the biological world are the products of genetic evolution” (Blackmore, 2000, p. 239).

Though an extremely tentative work—Blackmore’s most common refrain is a variation on “this is speculation and more study is required”—*The Meme Machine* presents a highly intriguing take on human culture, and one that is surprisingly in line with the views of modern copyright activists who view regulations as an unnatural restriction of mankind’s inherent drive to copy and to remix (Lessig, 2008). With its view of humans as creatures defined by their predilection for imitation, it not only helps explain seemingly improbable trends in popular culture, but also the prevalence of plagiarism in seemingly all cultural areas; it’s just *what we do*. It also theorizes that most academics are currently looking in the wrong place when they study creativity, and that instead of focussing on creative individuals, we should be looking at the specific ideas that succeed in replicating themselves within the popular consciousness. Not that Blackmore denies the existence of creative individuals, inasmuch as some people do seem better able to reproduce and spread memes; but, like evolution’s shift to studying individual genes, it is individual memes, in Blackmore’s view, that should be the focus for those studying the cultural world.

### 2.2.3 Choosing a view

It is tempting at this point to pick one of these creative schemas as the most compelling, and use it as a framework for further study. At the very least, declaring the author's own biases is usually a useful exercise, and I have no trouble admitting that I lean towards those views that emphasize imitation, alteration and collaboration as the heart of the creative effort. However, this preference stems less from significant study than from anecdotal observation of my own creative process and those of the artists I have encountered on a day-to-day basis. And without pursuing significant study in psychology, sociology, biology and any number of related fields, it is difficult, if not impossible, to reach an informed conclusion.

Fortunately, settling this issue is not the goal of this thesis. Rather, the aim is to try to suss out the views of those who habitually (and professionally) engage in acts of creativity. As Arthur Berger has argued (as quoted by Philip McIntyre), "artists tend to be the forgotten men and women in the field of mass communication scholarship" (McIntyre, 2006, p. 201), and while he was arguing for a general focus on artists over studies of audiences and the media, I choose to take him more literally. There has been surprisingly little effort to engage with artists directly in studies of the creative process. There have been recent studies focused on everyday acts of creativity<sup>9</sup> and retrospective analyses of major creative figures throughout history based primarily on their journals and correspondences (Nakamura & Csikszentmihalyi, 2001; Dunne, 2000 and Sternberg, 1988, for example), but few examples of direct engagement with professional artists. The fact that Simon Frith, in 1990, cited a 1977 study of long-forgotten boogie-rockers Commander Cody and his Lost Planet Airmen as one of the last serious looks at the creative process of professional pop musicians is more than telling, it is downright disheartening (Frith & Goodwyn, 1990). Not to downplay the significant efforts of those involved in the more theoretical or everyday sides of creativity, but this seems to be about as large a gap in the literature as one could conceive.

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<sup>9</sup>Louisa-Jayne Stark and Timothy Perfect's work on unconscious plagiarism is particularly interesting; see Perfect & Stark, 2006 and 2008.

#### 2.2.4 What do songwriters believe?

As important as it is to understand the legal and theoretical frameworks surrounding creativity, both areas are presented here as background to the true issue at hand. At its core, this thesis hopes to serve as at least an entry point to understanding what musicians themselves believe about their acts of creativity, and how those beliefs affect their actions. How willing are they to borrow from the works of others in their creative process? How do they react when their own works are re-used by others? What effect do legal restrictions have on their creative actions, and how familiar are they with the protections afforded to them under intellectual property laws?

While Frith was right to point out the dearth of studies that actually involve artists to any significant degree, there has been at least one recent attempt at understanding the view musicians have of creative borrowing.<sup>10</sup> That study (McLeod & DiCola, 2011) is both thorough and well-conceived, seeking the opinions of musicians on both sides of the debate on the use of sampling in modern music, in addition to industry figures and representatives of artists. Some, like Mark Volman of '60s pop group The Turtles, argue that “Anybody who can honestly say sampling is some sort of creativity has never done anything creative” (McLeod & DiCola, 2011, p. 63). Others, like Chuck D of Public Enemy, believe that sampling is an essential part of a vibrant art form, that it can be both creative and political. Unsurprisingly, it seems impossible to reduce these views to any one “artistic” perspective, but this is not a weakness in McLeod and DiCola’s work. Rather, it illustrates that even when confined to one area of one artform’s practices, the issues surrounding copyright and creativity are incredibly murky.

One limitation of the *Creative License* project—and it is an entirely understandable one given

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<sup>10</sup>There has been at least one other major attempt to address the issue of artistic engagement with intellectual properties, and oddly enough, it came not from media studies or law but library and information studies. In the mid-1990s, the field turned its eye towards the ways in which artists use information, a broad term that includes books, films and television programs either directly or indirectly related to their artistic projects (Cobbledick, 1996). The first such study focused on the library use of artists in an academic context (Cobbledick, 1996), using a series of interviews with artists to design a survey for future use. Other scholars have picked up on the project, applying the survey to American artists who are not based at academic institutions (Visick et al., 2006) and conducting further semi-structured interviews with Canadian artists in the internet era (McLaughlin, 2008). These studies tend to limit the definition of art to a fairly traditional one that would exclude popular music, but seeing as the aim of these studies was to understand the role of a plethora of information sources in an artist’s creative process, they still provide a useful foundation on which to base an in-depth study of the role of intellectual properties in particular.

the scope of the potential discussion—is that it limits itself specifically to a discussion of digital sampling. This is without a doubt one of the most contentious areas in modern copyright law, and is particularly fascinating as it often touches on issues of generational, racial and class-based conflicts—fertile ground for academic analysis if ever there was. However, sampling is not the only possible form of creative borrowing. In music alone, one can borrow or transpose a melody across a new chord progression, quote a line from another song in one’s lyrics, use the plot of a film or story as inspiration for lyrics, or attempt to capture the “tone” or “feel” of another song, and that’s hardly scratching the surface of the potential forms of quotation, allusion, recontextualization and creative transformation available to a songwriter. None of these actions involve sampling, but all of them have relevance in discussions of the creative world.

As well, McLeod and DiCola’s study takes a predominantly American perspective. It views the issues around creative borrowing through a lens of American culture and legal precedents, hardly touching on areas like moral rights that do not appear in that nation’s legal system, and relying heavily on the United States’ robust fair use exceptions. While Canada’s fair dealing provisions are moving closer to that American approach, McLeod and DiCola’s book cannot (and does not aim to) reflect the ways the Canadian legal system influences our own artists.

Those are exactly the two gaps this thesis aims to address. It is certainly not a comprehensive look at the attitudes of the Canadian creative community, the Canadian music industry or even the realm of independent rock musicians. It is, however, intended as a cracking of the metaphorical window, just enough to give a sense of how the voices of musicians themselves can potentially freshen the conversation around copyright and creativity in Canada.

## Chapter 3

### Methodology: Considering the interview

In Clive Seale's *Researching Society and Culture* (Seale, 2004), Bridget Byrne's chapter on qualitative interviewing lists six common questions to consider before taking on an interview-based project: "Why interview?", "Whom do you interview?", "Where do you interview," "What do you ask?", "How do you record interviews?" and "How do you analyze interviews?" Some of these questions are more straightforward than others, but they are all valid, and I will address them each in turn.

#### 3.1 Why in-person interviews?

Even given the previously stated goal of uncovering artists' practices and attitudes, there are a few approaches that could be taken. One is an ethnographic study of the sort in Geoffrey Stokes's 1977 *Star-Making Machinery*, in which Stokes observed the recording of an album by Commander Cody's Lost Planet Airmen, a boogie-rock band who found moderate success in the mid-1970s. This approach has the advantage of comprehensiveness, allowing Stokes to observe the creative process in the moment, rather than through the recollections of the artist. Given that some scholars have described the actual creative moment as being one where the artist is "lost" in a process of play and is not consciously aware of what they're doing (Bennett, 1980), ethnography seems to be a fairly ideal process. And Stokes's work is engaging and comprehensive in regards to how albums (or at least that particular album) are recorded, capturing dynamics within the band, the recording sessions and the industry in general in a fascinating portrait.

However, this type of ethnographic research has more than a few disadvantages as well, particularly in relation to the creative process. Stokes's observations of Commander Cody were limited to the recording process, beginning with the band's early encounters with the album's producer

and continuing from there. The project did not include observation of the actual songwriting, which was largely complete before the meeting with the producer. It still shows creative work, as songs are tweaked and rearranged in the process of recording, but most of its discussion is around refinement of ideas, rather than the generation of a new work.

This is partly because the creative moment is difficult to predict. While there are some exceptions, many artists seem to agree that ideas can come to them at any time. Capturing the moment of genesis (if such a thing even exists) would take constant observation, and it seems highly unlikely that any musician would agree to such a thing.

The bigger problem, though, is that the creative process is so internal. Even if you could watch a songwriter in the process of creating a song, all you would hear is the output. Any inspiration that the artist was drawing from or goals that they were working towards would be impossible to observe. The only way to get past that is to break out of the role of passive observer and conduct an interview, which would either interrupt and quite possibly derail the process or would take place after it was finished. The ethnographic observation would become a complement to the interview, or vice versa, but either way, the interview would be a necessary component of the process.

Another approach would be to conduct a survey of songwriters about their creative process. This would certainly be able to reach a wider number and greater variety of songwriters than interviews could in the same amount of time, leading to greater generalisability and higher statistical validity. Cobbledick's visual arts surveys (1996) could even serve as a template for these surveys, providing a solid theoretical grounding.

Again, though, there is a difficulty. As discussed earlier, there is little agreement among academics as to the definitions of many key terms in discussions of copyright and creativity, never mind the actual processes involved. Designing a survey that doesn't carry implicit assumptions about those processes and definitions would be a Herculean task, if it is possible at all. If the goal of the project is to understand artists on their own terms, free of theoretical preconceptions, surveys are simply impractical.



Interviews, then, would seem to be the most straightforward way to approach the subject at hand. Whatever empirical losses the interviews lead to in terms of increased subjectivity and limited generalizability are more than made up for by their ability to allow the subjects to reframe the discussion whenever they see fit and to challenge any preconceived notions that are inadvertently brought into the discussion, as well as allowing for a great deal of depth and access to internal processes that would otherwise remain unknown. There is still the danger that the interviewee will (intentionally or otherwise) give inaccurate or incomplete answers, especially in response to questions that occasionally challenge conventional notions of creativity, but an offer of anonymity will hopefully mitigate that issue.

### 3.2 Whom do you interview

*Creative License* (McLeod & DiCola, 2011) is extremely ambitious in both its breadth of interviewees and their profile, speaking with high-ranking executives and ground-breaking musicians in order to capture the most significant voices in the debates around musical sampling. As a Masters student, my options are far more limited. So, however, is the scope of this thesis's central question. Given that the aim of this paper is to better understand the views and habits of artists in general, I am able to set my sights on more attainable interview subjects.

One of the most important tasks in choosing with whom to speak is settling on a definition of songwriter. It is tempting to use professional criteria here, defining a songwriter as someone whose income primarily derives from writing songs, and recording and/or performing them. However, this criteria would limit the discussion to an upper tier of the music industry, as the vast majority of songwriters, even those with recording contracts, often supplement their income through other employment. Only the most successful acts are entirely financially independent, and this reliance on their craft for income could colour their views regarding the rightful role of copyright.

Going too far in the other direction doesn't necessarily work either, though. In his *On Becoming a Rock Musician*, H. Stith Bennett states that "the career of *becoming a rock musician* is

simply *being* in a local rock group” (Bennett, 1980, p. 3, emphasis in original), making a fair point that there is no formal educational or professional barrier to prevent anyone from calling themselves a rock musician. Still, eliminating professional requirements altogether and relying on self-identification of subjects opens a whole host of questions around the minimum barrier to songwriter status for the purposes of this study. Is someone who hums invented melodies while carrying out housework a songwriter? What about someone who improvises playful lyrics for a loved one? It could be argued that their process is similar to that of professional songwriters, but given the lack of recording or public performance, their songs are unlikely to cross over into a space where discussions of copyright are particularly relevant.

A happy medium seems necessary, then: For the purpose of this thesis, a songwriter is someone who both considers themselves to be a songwriter, and who derives some income from their songwriting, whether through the sale of recordings or through performance.

With that definition out of the way, there is still the task of selecting which songwriters to speak with. If the aim here were pure quantitative objectivity, it would be important to avoid possible biases within the interview pool by selecting musicians from diverse backgrounds and at a variety of points in their career. Within the confines of this project, though, interviewing a statistically significant number of musicians is beyond any realistic scope, and with only a handful of interviewees, aiming for statistical generalizability would be an exercise in frustration. Nevertheless, there’s still an appeal in gaining at least some diversity of opinion, so an entirely homogeneous group is also undesirable.

I ended up using three main criteria in the selection of interviewees, each of roughly equal importance:

1. Interest: Although a highly subjective criteria, I wanted to ensure that each songwriter’s work seemed likely to yield an interesting discussion. Of the subjects interviewed, these points of interest included a predilection for literary quotation within one songwriter’s lyrics and a consistent use of B-movie imagery in another’s, as

well as one songwriter's roots in Chinese classical music and another's in experimental improvisation.

2. Availability: I would be conducting the interviews in a relatively tight time frame. As I prefer in-person interviews (see "Where do you interview" below), this meant that the schedules of the musicians I spoke with became quite important—they needed to be physically accessible. Additionally, they needed to be willing to speak with me for the project. The contacts developed through my background in entertainment journalism helped considerably with this aspect.
3. Familiarity: It was important to me that I be able to provoke and engage the artists I was interviewing, meaning a familiarity with their work and with the musical genres in which that work was situated was essential. For that reason, all of the artists I spoke with fell into a broadly interpreted category of "indie rock" music.

Using these criteria, I ended up asking nine songwriters in three Western Canadian cities to take part in the project. While one did not respond, the other eight agreed and seemed eager to take part, though scheduling conflicts reduced the final total to seven.

### 3.3 What do you ask

In a preliminary project on a similar topic, I had begun my interview by asking the subject to provide her own definitions of a number of legal and theoretical terms that I had determined to be key to most discussions of intellectual property (fair use, users rights, public domain, etc.), to establish a baseline of how her understanding of the issues compared to those of scholars in the field. Afterwards, I found myself regretting this tactic: It immediately framed the conversation in a version of the current theoretical discourse rather than allowing it to evolve based on the author's own creative framework<sup>1</sup>.

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<sup>1</sup>Worse, it could also be seen by the interviewee as an attempt on my part to establish my own authority on the subject, which is both unflattering and undesirable.

For the actual project, then, I chose to keep the interviews as informal as I could while still maintaining academic rigour. As this project is covering largely untravelled terrain, I also didn't want to use an overly rigid set of questions. There were certainly issues I wanted to consistently address, but it was more important for me to be able to pursue tangents and allow the conversations to evolve naturally enough that my own preconceptions about the creative process wouldn't overly restrict the discussion.

I settled on a handful of questions that I would use as conversational prompts. These were:

1. Have you ever used a direct quotation from another work (musical or non) in one of your lyrics?
2. Do you use indirect references to other works (i.e. lyrical allusions)?
3. Were any of your songs specifically inspired by another musical or non-musical work?
4. Have you ever used a direct musical quotation?
5. Do you ever use indirect musical quotation (i.e. allusions to a particular band or genre)?
6. Do you think your attitude towards quotation in music and lyrics has changed over time?
7. Have you ever questioned whether something you created was subconsciously plagiarised?
8. How would you feel if you heard a song tomorrow that was substantially similar to one of yours?

More important to me, though, was the ability to flesh out the responses of my interviewees. For example, if they responded that they had used direct lyrical quotation, I would try to ensure that

the conversation then covered when in their creative process they decided to use the quotation, whether they had any hesitation about using a direct quotation and why, and what their attitudes are towards attribution. If they did have hesitation, I would try to establish where that hesitation came from and how (and why) they overcame it. And in a process similar to grounded research (though less thorough), I would let each interviewee's responses inform those follow-up questions for the next interview. The eight core questions remained unchanged, but as the interview process went on, I found myself better able to extract details that would not initially have occurred to me to pursue.

In most cases, once the conversation had already run its course, I would introduce the legal and theoretical terms that I had led with in my preliminary interview, as I still felt it would be interesting to find out what (if anything) my interview subjects thought about these terms, and it would be too late in the conversation for the terms to distort the artist's pre-existing thoughts. If one of these terms then prompted further discussion, I would allow that conversation to run its course before introducing the next term, again out of concern for how those other terms might reframe the conversation.

### 3.4 Where do you interview, and how do you record the interview

The first issue to consider when it comes to the location of an interview is whether they will be conducted in person or remotely. Each has its advantages, with remote interviews providing far more flexibility, while in-person interviews allow for the observation of subtle cues that can easily be missed over the phone, and may not be obvious even over video conferencing services like Skype or FaceTime.

Given the small number of interviewees and the importance of nuance in the conversation (i.e. the fact that subtle conversational cues could hint at different avenues of approach), I decided to seek in-person interviews wherever possible, using Skype as a potential last resort. Fortunately, resorting to remote interviews was not necessary, and I was able to travel to Winnipeg and Vancouver

to meet with my subjects.

Once it was established that the interviews would be face-to-face, my primary concern when choosing specific locations was the comfort of the interviewees. As the conversation could, in theory, lead to their discussing actions of questionable legality or that violated social or professional norms, it was important that the subjects did not feel on guard; any reluctance on their part to broach a topic would be a huge loss to the project.

The easiest way to assure this comfort was to allow each interview subject to choose where the interview would take place. Three of them chose local coffee shops, while two preferred to do the interview at their homes. One other met me at the home of a mutual friend, and the last, due to scheduling, picked the cafeteria of his workplace<sup>2</sup>. As for timing, for the out-of-town interviews, I provided a range of dates that I would be in their city, but otherwise left the decision in their hands.

The last remaining question, then, was how to record the interview. Again, the main driver behind my choice was keeping the interviewer at ease. Each interview would be recorded using a small hand-held digital recorder, placed somewhere unobtrusive. As all of my interviewees have been the subject of numerous media interviews, the presence of such a device was unlikely to throw them off, and the recorder itself was small enough that it was easy to forget it was even there. The digital files would then be transferred to my computer for transcription.

### 3.5 How do you analyse interviews

In choosing how to analyse these interviews, my first step was to rule out the approach that seemed most impractical. As mentioned previously, the goal of this project is to gain insight into possible avenues for future research—it is a preliminary stab at a topic that has been surprisingly under-explored. Because of the focus on a small handful of in-depth interviews, it would be impossible to draw decisive conclusions about the nature of creativity and its relationship to accepted legal and theoretical frameworks—the sample size is simply not large enough for any sort of statis-

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<sup>2</sup>This interview, the only one where the location was forced, also ended up being the most difficult, with the subject coming across somewhat hesitant at a number of points

tical analysis. This effectively rules out any sort of quantitative approach, though a future study could certainly attempt to confirm or discard certain trends that emerge from these interviews using quantitative surveys, or other tools along those lines.

Instead, a qualitative approach to analysis is preferable. Given unlimited time and resources, grounded theory would seem to be an ideal approach for this project. Grounded theory is a technique that attempts to approach its subjects without preconception in order to base its findings entirely off of the data uncovered in the process of conducting interviews (Seale, 2004). This requires an iterative process—conducting an interview, analysing and coding its content and searching for “negative instances” or statements that cannot be explained by the current conception in deciding which direction to take with subsequent issues. Each cycle of interviewing and analysis reshapes the analysis, until a point of “theoretical saturation” is reached, where further interviews cease providing significant new insight.

Of course, rather than being unlimited, the time and resources for this project are actually quite limited. This becomes a problem in an attempt to do true iterative research, as each interview would have to be followed by thorough analysis, leading to revision of the interview questions and the selection of a new interviewee, and with my desire to speak face-to-face with interviewees in several cities, the sort of flexibility required by that process would be unattainable.

Instead, I chose to use a scaled-back version of grounded research. I still attempted to approach the interviews with as few preconceptions as possible, and after each conversation I would look for emergent themes that I could pursue in subsequent interviews. In this sense, the process was somewhat iterative, as the types of cues I would watch for in the conversations were gradually refined over time. But I still chose all my interviewees in advance, meaning it would not be possible to dramatically change course mid-project and to watch for the “theoretical saturation” that comes from true grounded research.

The next step was to look at all of the interviews together and identify any key themes that emerged from the text. I would treat the interviews primarily as a resource, using the interview-

wees' answers as a source of subjective information. At the same time, there is also some value in treating the interviews as a topic in themselves, as the attitudes of the interviewees—their willingness to discuss creative borrowing and the legal, theoretical and moral framework surrounding the practice—are certainly relevant to the discussion at hand.

Once these themes were highlighted, the next step would be to compare the songwriters' attitudes about creativity to the existing theories of creativity (broadly, creativity as an individual process, a system, or a myth) to see if any of those emerged as a best fit. From there, I would contrast that view, with its emphasis on authorship and the protection of the fruits of intellectual labour from unauthorized exploitation, with North American copyright law (and western copyright in general), which seems to implicitly support a more individualistic view of creativity.

Again, though, the goal is not to speak about songwriters in general, but rather to uncover the beliefs of these individual songwriters. The theoretical frameworks (as discussed in the literature review) are meant to provide context for this discussion.



## Chapter 4

### Data: Understanding the interviewees

Before looking at the interviews together, it should prove useful to touch on each of them individually. Fortunately, all of the subjects in this project were comfortable being identified, and so this chapter will be able to provide a brief background of each songwriter's musical career<sup>1</sup> in addition to a summary of the interview. As discussed in the methods chapter, the interviews were conducted in person in a setting of the interviewee's choice. The interviews lasted an average of 49 minutes, with the shortest ending after 37 minutes, and the longest lasting 63 minutes. They are presented in alphabetical order by the subject's last name.

#### 4.1 Tom Bagley

Tom Bagley (who performs under the stage name Jackson Phibes, a reference to both the Jackson Five and the B-movie *The Abominable Dr. Phibes*) has been heavily involved in Calgary's music scene for over two decades. As frontman of such Calgary-based bands as Colour Me Psycho, Forbidden Dimension and The Agnostic Phibes Rhythm and Blood Conspiracy, Bagley's music is often categorized as horror-rock, a genre that is heavily indebted to acts like The Misfits and The Cramps who combined imagery from horror films with the raucous energy of punk rock—although, as Bagley points out repeatedly in the interview, his personal musical influences stretch far beyond that genre into garage rock, glam, heavy metal, and even Henry Mancini, and his most recent project is rooted in the folk tradition of murder ballads.

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<sup>1</sup>One convention in music writing is to describe a musician's sound in terms of its influences, either broadly by genre or in specific comparison to other musicians. Naturally, this habit makes things tricky when trying to avoid preconceptions regarding the role of influence in the creative process, implying as it does that songwriting can be broken down into its constituent parts and that an astute writer can determine those parts without any direct input from the songwriter. The following chapter does make such comparisons on occasion, but unless the comparison is a direct quote from the interviewee, they are meant to be taken as purely descriptive and purely subjective on the part of the writer. A more thorough examination of the role of influence can be found in the Analysis chapter.

Though he has been a songwriter and frontman since the mid-1980s, Bagley's music is not his primary source of income. Instead, he spends much of his time working as a professional illustrator, with work appearing in many publications as well as concert posters, advertisements and more, and again using a pseudonym, Tomb (from his first name and last initial). Like his music, his illustrated work is heavily influenced by "trash" culture, providing a highly cartoonish take on horror, sci-fi and tiki imagery, among others.

#### 4.1.1 The interview

Throughout the interview, Bagley reveals himself to be highly knowledgeable about popular culture in general, and both rock music and cult film in particular. His answers are peppered with casual references to long-dead blues musicians, obscure rockabilly singers and horror authors, as well as more popular acts like Ted Nugent and KISS, and while he'll occasionally pause to make sure that his reference has been understood, for the most part he seems to assume that I will be familiar with the cultural artefacts he discusses.

When it comes to discussing the role of other works in his creative process, Bagley is remarkably open, and remarkably self-aware. His response to the question of whether he uses direct quotations in his lyrics is "I like to rip off stuff," immediately adding "I say 'rip off' because it sounds lower class," a qualification that hints at both a sense of playfulness and possibly discomfort at discussing his music in an academic context. Still, it's clear from his tone of voice and his energy that he enjoys discussing his influences, and he often pauses the conversation to find an album or film that he was inspired by, or to play a riff on his guitar to illustrate one of his points—though he also has a charming tendency to sing those riffs when he can't be bothered to grab the guitar. It is obvious that for Bagley, the idea that his songwriting draws heavily on the work of multiple sources holds no stigma.

That in itself is not a surprise coming from a musician whose stage name combines references to mainstream and underground culture. A cursory glance at Bagley's recorded output is more than enough to lead one to strongly suspect that he is the type to take pleasure in some form of cultural

appropriation, and so his repeated confirmation of a tendency to allude to other works lyrically is not particularly noteworthy. However, the detail and candour with which he explains the references often goes beyond what might be expected.

For example, when discussing his take on the song “In the Pines,” a public domain work originally written by Huddie Ledbetter (better known as Leadbelly), Bagley uses the song as a chance to provide a history lesson in blues music traditions. After stating that he re-wrote all the lyrics to the song, he begins to explain one of the sources of the new lyrics, saying that “some lines are from Jimmy Rodgers, the singing brakeman” before detouring to talk about how common it was for white musicians to record and publish traditional black music and take credit for it. He then adds an anecdote about Rodgers’ life before finishing by saying that his own version of “In the Pines” takes its rhythm “from this Link Wray version where he was trying to do an *Exile on Main Street* record with all these guys hooting and hollering,” an admission that could actually put Bagley on legally shaky ground were Link Wray’s estate to come across it: Even if a song is in the public domain, new arrangements of that song can still be covered by copyright. If Bagley’s version of “In the Pines” clearly uses elements that were novel to Wray’s rendition from the 1970s, it could be considered an infringement of the new arrangement, although rhythm is raised far less frequently than melody and lyrics in discussions of infringement.

Bagley is equally open to describing musical quotation in his works. When discussing a song called “Atomic Cannibal”<sup>2</sup>, he says “there’s rip-offs in that. The main key change is from a Ron Haydock rockabilly song that I grafted new lyrics on, and there’s... a bridge that totally doesn’t happen in the Ron Haydock song, so it’s my own viewpoint.” When asked if he was conscious while writing the song that he was taking the key change from that particular song, he immediately offers two justifications for doing so: First, he mentions that the band The Cramps would often take the music from one song and the lyrics from another and call it their own, and secondly, he describes changing the riff and adding in another riff from a KISS song so that it was “enough mixed up” to justify the use.

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<sup>2</sup>Named for an unproduced movie title Bagley found in the book *Keep Watching the Skies*.

That need to justify his musical borrowing will come up repeatedly in the interview, though mostly in relation to direct lyrical or musical quotation. No such disclaimers come when he talks about borrowing the “feel” of another musician, like writing a riff with the “dumb-ass, plodding” sound of Ted Nugent or an intro that “sounds kind of like a John Carpenter piano thing.” This distinction is made most clear when Bagley is asked how he’d feel if another musician used The Cramps’ process of riff appropriation on one of his songs:

I wouldn’t feel too bad, because that’s sort of what I did when I started writing songs back in the day. They’re not taking money out of my mouth or anything, because they’re still putting work in and doing the cross-pollination.

Later, he’s asked if he would feel differently if he were sampled rather than if someone were re-playing his riff, and again he emphasizes that for re-playing “they’ve still gotta do the work, they’ve still gotta learn how to play it.” It seems likely that he would have an appreciation for approaches to intellectual property ownership that emphasize a “sweat of the brow” definition, where creativity is at least partially defined by the amount of effort involved in the creation.

There is one other recurring theme in the interview that bears mentioning: Bagley also repeatedly mentions that he has rarely been interested in straightforward replication of the works of others. With a few exceptions, he has preferred to come up with his own stories in his song lyrics, even if those stories use an unproduced film title or a quote from a pre-existing murder ballad as a jumping-off point. Even the widespread practice of covering songs has little appeal to Bagley, who explains

...from day one, I would try to write songs, I didn’t want to do just a cover version of a Stooges song, I wanted to write a song that sounded like the Stooges wrote it, but I wrote it. And it would suck, but that’s how you learn to play guitar.

Clearly, despite the pervasive presence of both lyrical and musical quotations and allusions throughout his songwriting, a kind of originality also holds a prized position, where Bagley puts his own spin on the sources he borrows from. As he says at the end of the interview,

I like '50s jazz, but I also like shitty '70s boogie rock, and then cool stuff like Paul Revere and the Raiders, and I try to mash it all up together.

## 4.2 Lee Hutzulak

Of all the songwriters interviewed for this project, Lee Hutzulak (who records and performs under the name Dixie's Death Pool) is the least conventional. To borrow a description from the press page for his latest album, released on Vancouver's experimental Drip Audio label,

Lee Hutzulak's music strikes a balance between electro-acoustic improvisation and acousmatic musique concrète, focusing on texture, tone and space. In folding the art of foley (movie sound effects) into music performance, Hutzulak continues to explore all manner of extended technique (Drip Audio, n.d.)

In short, Hutzulak tends to avoid traditional song structures and pop conventions, building his songs in the studio using an assortment of collaborators, all experienced in the realm of improvised music. Reviews of his albums reflect this unusual process, focusing on terms like "atmosphere" and often including descriptors like "weird," "challenging" or "experimental" (Adams, 2011; Acker, 2011; Remus, 2012; etc.)

Like Tom Bagley, Hutzulak has been making music for decades, but does not earn his living primarily as a musician. Our interview takes place at the Vancouver Film School, where he works in the resource centre. Due to scheduling constraints, the interview actually takes place during Hutzulak's lunch break, in the school's bustling cafeteria. This may have led to a couple of small

distractions during the conversation, but in general Hutzulak was engaged and thoughtful. His thoughtfulness was reflected in a much slower conversation than most of the others—while the interview with Hutzulak lasted only about 10 minutes less than the one with Bagley, the transcript is just under half as long.

#### 4.2.1 The interview

At the beginning of the interview, Hutzulak raises the issue of what is meant by songwriting, saying of his process that it is “more like composing” because it involves “having a whole studio at your disposal... and just mixing and matching, collaging, I guess. Which doesn’t really sound like songwriting to me.” For a moment, this makes me nervous, as my working definition of a songwriter is predicated on their self-identifying as songwriters. A quick clarification confirms that Hutzulak “definitely” considers himself a songwriter. His concern is whether his less traditional songs should come into the discussion.

Even the concept of what defines song is up in the air at the beginning of the conversation. He asks, “Would you consider lyrics to be constituting a song, or an instrumental, is that a song?” It’s clear from the beginning of the interview that, as few preconceptions as I’m trying to bring, Hutzulak has even fewer, and is hoping for some clarification. I insist, however, that he use his own definitions for terms like “song” and “songwriter,” and approach the interview from his own perspective.

Lyrically, Hutzulak admits to a variety of direct quotations, though from unexpected sources. While a quotation from Timothy Findley’s *Not Wanted on the Voyage* is relatively straightforward, he also describes borrowing heavily from business and industry magazines, astronomy books, and books on 3D computer modelling. Jargon in particular seems to hold a prized position for Hutzulak, providing “some very interesting lyrical inspiration,” which he quotes from as “fragments, rearranged and recontextualized.”

Interestingly, Hutzulak states that he has little interest in quoting other lyrics in his work. Early in his career, he took inspiration from the timelessness of jazz standards by the likes of Billie

Holiday, but he finds that clichéd lyrics are “one of the big weaknesses in songwriting in general,” and so avoids anything that could lead him to emulate that weakness. He also says that “taking lyrics from another song” feels like “cheating” or a “shortcut,” whereas finding lyrics through research, reading and reinterpretation are “hard-won” and the result of “doing my work.”

The idea of recontextualized fragments comes up repeatedly throughout the interview, with Hutzulak often comparing his work to collage both as a descriptor and a justification for practices. He mentions that taking phrases from industry magazines is “kind of like a collage artist. Anyone who’s using fragments of a photograph clipped out of a magazine, I think that they’ve sort of taken ownership of it.” He also mentions using collage techniques on his very first recording, using “a squeaky stove door as a rhythm section” along with “sound effects on pretty much every track.”

But he also distances himself from collage at one point. Asked if he thinks of himself as a collage artist, his answer is a definitive “No,” preferring to think of himself more broadly (or more simply) as an artist.

However, there have been times where Hutzulak’s lyrical quotations were too extensive for him to consider it collage. For a piece he recorded and released on cassette in 1992, he read the entirety of one of Dick Bruna’s Miffy books (a children’s book series about a rabbit) over an original recording. Asked about the genesis of the project, he can’t remember exactly how it came about:

I mean, having the book... it seemed to match well with my attempt to play the clarinet. This really pathetic music, but very charming. And then naive spoken word for the story.

But while he can’t recall whether the music or the idea to use the story came first (“Back then things came together really quickly”), he does recall that he was sure to credit Bruna in his liner notes.

Hutzulak mentions the importance of citing sources a number of times, even when it comes to citing works that served as inspirations but not sources of direct quotations. Asked why, he responds “I know that I’d be interested to know where things came from and how it fits in the

world,” adding as well that he values “just not taking someone else’s work for granted.” This view is also reciprocal: If someone were to quote one of his works, crediting him in the liner notes would be enough to assure him that he was being respected, rather than ripped off.

When it comes to musical quotation, Hutzulak’s views are far more restrictive. He has no interest in direct musical quotation, saying he has “never intentionally” done it, and that he also can’t think of an instance of unconscious plagiarism, with the exception of “similarities to my own stuff,” which he also tries to avoid. Our conversation briefly touches on sampling, which he again refers to as “a little bit like cheating,” saying “I’m not interested in other people’s music as found art,” although he certainly uses other found sounds in his work.

His reasons for this have nothing to do with the legal complexities surrounding quotation and sampling, though. Rather, he keeps coming back to ideas like “interest” and “cheating,” implying that the social, aesthetic and moral codes around lyrical and musical borrowing hold more weight than the legal system imposed by copyright legislation.

It is worth noting, though, that Hutzulak’s actual view of “stealing” songs is quite relaxed. While talking about how he’d react if he heard someone else performing a song that was substantially similar to one of his, he responds by talking about the ownership of music in general:

You know Coldplay, “Yellow?” Anyone can write that song. I mean, there’s a certain amount of getting everything right, and in the right place. You’ve still got those chords but maybe your lyrics just don’t match up. ...You could have all of the same chords, but maybe the emphasis isn’t in the same place. It’s not like they own that chord progression, really.

He also adds that “the last case that I remember hearing about someone suing someone else over copyright was Huey Lewis and the News and Ray Parker Jr.... and I heard them as two pretty different songs.” Given his view of a general lack of originality in pop music, it’s probably appropriate that he seems to take accusations of stealing with a grain of salt.



## 4.3 Dan Mangan

Of all the songwriters interviewed for this project, Dan Mangan is arguably the closest to a “mainstream” musician<sup>3</sup>. His songs are relatively straightforward, melodic folk and rock, with lyrics that tend towards conversational rather than obviously poetic language. This approach has won him widespread critical and commercial acclaim, including two Juno awards (Best New Artist and Alternative Album of the Year, both in 2012) and a spot on the shortlist for the 2010 Polaris Music Prize, an independent award voted on by a jury of approximately 200 Canadian music journalists and industry figures. It’s not uncommon for Mangan to sell out 2,000 to 3,000-seat venues, or to be listed as a headliner at music festivals across Canada.

For our interview, Mangan chooses to speak at a coffeeshop in downtown Vancouver. He comes across as highly engaged throughout the entire 48-minute conversation, answering questions without hesitation and as thoroughly as he can. He also seems more inclined than most of the subjects to make philosophical statements or to address the broader implications of the questions, occasionally digressing into areas that are removed from the direct area of his own creative process, but these digressions are usually quite telling regarding his beliefs about creativity in general.

### 4.3.1 The interview

Mangan admits to two instances of direct lyrical quotation, both of them very brief. The first is the use of a seven-word phrase from Leonard Cohen’s “Anthem” (“Ring the bells that still can ring”), and the second is a repetition of the phrase “The hills are alive,” used three times in his song “Starts With Them, Ends With Us.” He admits to these uses of quotations readily, but he also offers defences of the uses without any prompting on my part. In both cases, he describes the quotes as an “homage” to the original artists, saying of the Cohen quote:

My intention was to reference him as an homage, which is why it’s a

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<sup>3</sup>While John K. Samson has held a prominent position in the Canadian alternative rock landscape for longer than Mangan, his history in the punk rock scene and extreme left-wing political views make the “mainstream” tag a harder fit.

direct quotation, and I would hope that people would recognize that in it and see it as a tribute rather than straight stealing and trying to make people think it was my own.”

In addition to the desire to pay “tribute” to songs he admires, Mangan offers a second reason for his use of direct quotation. Of the Cohen quote, he says “it just fit perfectly into the cadence of the song and made sense in terms of the message I was conveying,” while with the *Sound of Music* reference, he again hints at a thematic resonance between the song he was working on and the lyric he borrows.

Although those are the only examples of direct quotation of other works that Mangan offers<sup>4</sup>, he later brings up one more example of borrowing from another work in his lyrics. The song “Rows of Houses” off his most recent album is based on the film *Stand By Me*, itself an adaptation of a Stephen King novella. Though the song doesn’t include any dialogue or other quotes from either the film or the story, it is written from the perspective of the film’s 12-year-old main character, as Mangan was “so moved by” watching the film as an adult that the song “just sort of came out.”

That description makes the emergence of the song sound almost accidental, but Mangan does describe the process of its creation, though in admittedly vague terms—he says that the process of writing it involved “putting myself in the shoes of that protagonist... and then thinking about what the world is that he lives in.” These seemingly conflicting descriptions are in keeping with Mangan’s other descriptions of his creative process as something that often changes, switching between lyrics and music as priorities. The one constant in the process, he says, is that he is “very very slowly writing all the time,” with ideas for songs constantly “in [his] head kind of spinning and being worked on.” He doesn’t state whether this “working” is a conscious process or not, although his habitual note-taking does imply some amount of active work on his part.

While he is somewhat open to the idea of lyrical quotation, Mangan has a harder time justifying the use of melodies or chord progressions from other people’s songs. He says that there has

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<sup>4</sup>He also mentions a tendency to write down interesting phrases from conversations he takes part in or overhears, but such phrases fall outside this paper’s definition of intellectual property.

“probably been a time or two” where he’s intentionally tried to write a song that was in some way similar to one he heard (“something in a similar rhythm or something”), but says that his “natural guilt of ripping something off directly would be so great” that he would not be comfortable with that form of quotation<sup>5</sup>. Instead he would rather learn the song and break down what makes it interesting, and then find a way to work that knowledge into his own work.

Despite his discomfort with musical quotation, Mangan does describe one instance of it in his own work, which he says arose subconsciously and was only discovered months after the song was recorded. Even then, the amount borrowed is only approximately two measures in length, accounting for a single line of lyrics—though as the first line of one of his most popular songs, those two measures are quite prominent.

His reaction to this discovery seems to be a blend of mild embarrassment and a sense that such unconscious plagiarism is inevitable. As he explains, “If you’re somebody who’s been listening to music your whole life, think how many thousands of melodies you’ve heard. And there’s only like 12 notes in a chromatic scale, so...”

This acceptance of unconscious plagiarism is in keeping with Mangan’s other descriptions of creativity in general. These descriptions tend to emphasize two points, the first being that the source of his songs is a mystery even to him, that “in some sense it just comes out of you, and on some level, it’s not a healthy thing to start questioning because maybe then it’ll go away,” and the second that all creative output is influenced by the art (and other stimuli) that one experiences in their lifetime.

This second point gets raised again and again by Mangan, using a variety of terms to describe it. He says that his “natural tendency... to throw in a chorus, or chorus-like transition, [is] because I’ve heard a billion choruses in my life.” At another point, he says that “if you’re a person who creates things, then whatever you’re barfing into the world is going to be comprised of whatever you’ve eaten,” and that “we’re all just products of all the chaotic societal synapses firing off against

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<sup>5</sup>Regretfully, I did not ask him why he views melodic quotation as being significantly different from lyrical quotation.

each other,” a description that verges on memetics’ abdication of the role of the individual. And, providing historical context for this view, he also refers approvingly to Pete Seeger’s description of musical quotation as “the folk process.”

Despite this view, though, Mangan still sees musical quotation as an issue of “integrity,” arguing that it’s not something you avoid because of potential legal ramifications, but for the same reason that you wouldn’t “push an old woman in front of a car... because that’s not a good thing to do to be a decent human being.” This example is clearly intended as hyperbole, but does indicate a view that taking someone’s music and passing it off as your own is a moral wrong. How exactly this view meshes with his seeming admiration of Seeger’s “folk process” isn’t obvious, but it does point towards the complexities involved in artists’ views of the creative process.

#### 4.4 Matt Masters

Beginning his career in the late 1990s, Matt Masters writes and plays country music, with no qualifiers. His work isn’t alt-country or country pop, but a direct continuation of the style established by acts like Hank Williams and The Carter Family almost three quarters of a century ago. As he relates in one anecdote, it’s the kind of sound that will make even a contemporary country songwriter say to him, “Oh, you play *that* kind of country.” His songs often use simple, straightforward chord progressions and rhyme schemes, and are instantly identifiable as falling within clear genre boundaries.

That doesn’t mean, however, that Masters’ work is seen as antiquated or outdated. He has written and performed a stage musical, *Don Coyote*, that was performed at Toronto’s Nuit Blanche in 2008, a festival that emphasizes contemporary art in public spaces. He was also the recipient of the Telus Arts Award for Artistic Innovation in 2009, and is known for taking on ambitious projects like performing 100 shows in 120 days in celebration of Alberta’s centennial.

Masters and I met at a coffee shop in the Inglewood area of Calgary, a few minutes from his home. He had recently become a father, and finding time for anything other than his parental

responsibilities is a challenge. In fact, about a half hour into the interview, Masters informs me that he'll have to leave early to run errands, leading the interview to terminate after approximately 37 minutes. As only the second interviewee, our conversation would likely have missed out on a few important areas even without the shortened running time. With those factors combined, the transcript strikes me as disappointingly full of areas that should have been followed up, but even still, Masters responds openly and thoughtfully to all my lines of questioning.

#### 4.4.1 The interview

As with all of the interviewees so far, Masters openly admits to using direct lyrical quotation within his songwriting, citing a track from his first album that opens with the line “God said to Abraham, ‘Kill me a son,’ ” a direct quote from Bob Dylan’s “Highway 61 Revisited” (which is itself a re-telling of the Biblical story of Abraham and Isaac, a public domain work). He even claims that his song is entirely inspired by Dylan’s song, that it “couldn’t have existed without that Bob Dylan song.”

Unlike previous interviewees, Masters doesn’t instantly offer a defence of lyrical quotation—the thought of it needing defending doesn’t seem to occur to him. When asked what made him feel comfortable taking a Dylan line to use as his own, he says:

I appreciate his copyright of his tune, but to quote somebody, if you quote somebody and you acknowledge that it’s their line, that’s just quoting. Definitely if you look at that song on the album jacket, it says “written by Matt Masters,” not “written by Matt Masters with one line by Bob Dylan.” Fair enough. But that’s such an obvious quotation, even the rhythm of it is sort of similar. I think that if you wear it on your sleeve, in that respect...

He did not finish the thought, but the implication is that you are justified if you are open and obvious about borrowing a lyric from another musician and aren’t trying to pass off their work as

your own.

Determining how that openness and obviousness should work is trickier. When the issue of attribution is raised, Masters says that he tries to always give credit to the original songwriters when he records YouTube videos of cover songs, and that he will provide audiences with information about the songs he plays live if he thinks there is a chance of confusion. He does tend to rely on the cultural savvy of his audiences, though, and jokes that it would be ridiculous to think that a listener would believe he'd written an AC/DC song, for example.

Oddly, while the obviousness of the Dylan quote is a big part of Masters' justification for its use (though again, it didn't seem to occur to him that such use needed to be justified), Masters goes on to admit that the chorus of the song is also taken from another work. As he puts it, he "literally stole" the chorus from a book of contemporary Christian hymns that he found in the Catholic church he attended as a youth. While he knew "that hymn for sure was written in the '60s or '70s" and "it's not public domain," he doesn't see anything wrong with taking the chorus without permission.

He does mention financial reasons for this justification as well. Because Masters is what he refers to as a "performing musician," as in a musician whose income is primarily derived from his live performances rather than from his recordings or radio play, his performances of songs that use other people's works are inconsequential. As he puts it, " 'Who cares if someone takes your song and sings it' pretty much is just the honest truth." The argument seems to be that, because Masters isn't profiting from a recording of someone else's work, there isn't anything to be concerned about. This leaves out the fact that his reputation as a touring musician is at least partially based on the quality of his songwriting, which means that his income is in at least some sense derived from his use of their works.

While both of those examples of musical quotation come from Masters' first album, I unfortunately did not find out whether he is still in the habit of taking from other works. His attitude towards such practices may be reflected in a later anecdote of his, where he describes another ex-

ample of a song of his taking a melody from a pre-existing work. A “couple years ago,” Masters wrote a song for the Calgary Flames, which he performed on centre ice at an NHL game. That song, “Home at the Dome,” ended up bearing a striking resemblance to Dolly Parton’s “Nine to Five.” While Masters didn’t notice it himself, when it was pointed out to him he realized “It is practically ‘Nine to Five.’ It’s not, but it practically is.”

His reaction to the subconscious act of plagiarism is telling. While he was embarrassed as a teen when the first song he ever shared with a friend turned out to be a near-direct copy of Neil Young’s “Heart of Gold,” his reaction to “Home at the Dome” was quite different:

I was like, hey, that’s awesome—that song was a hit! At this point I think I’m much more comfortable with my place as a musician and as a songwriter that I’m like, hey, I’m not a plagiarist. So I’m OK if I sound like someone else. And if I sound like someone I like, well, bully for me.

It should be noted, though, that this attitude only seems to apply to unconscious borrowing. While Masters is quite comfortable borrowing the “feel” and “structure” of other musicians’ work, writing songs that emulate but don’t directly quote Bruce Springsteen and *Toys in the Attic*-era Aerosmith, he has a harder time with more direct borrowing. As mentioned, this isn’t because of legal restrictions; rather, it’s just that “one of the things I really strive for is writing a new song.” Asked what percentage of his songs he could break down into their individual influences—the chorus taken from song X, the bridge from song Y, as in his “Abraham”—he answers that it would be “a minute percentage... I’m not against it. I’m totally open to using it as a tool. If there’s a line that’s just right, whoever wrote it, I’m totally OK with bringing it into my song. But it doesn’t happen often.”

## 4.5 Doug McLean

As the singer and songwriter for Winnipeg's The Bonaduces, Doug McLean was strongly associated with that city's Endearing Records label in the mid-1990s.<sup>6</sup> After that band split up at the turn of the millennium, McLean founded The Paperbacks in 2000, expanding his sonic palette from the punk-inflected sound that characterized The Bonaduces (which helped them stand out against the typically mellower Endearing roster) to a style that can incorporate elements of country, jangle-pop and more while remaining clearly in the pop-rock realm. And while the The Paperbacks have only released three full-length albums and two EPs in the 12 years since its founding—not exactly a prolific release schedule, as McLean himself admits—the releases themselves tend to be ambitious. The most recent, 2010's *Lit From Within*, is a 32-song, double-disc album that clocks in at just over two hours.

Of the seven interviews carried out for this project, the one with McLean is the least formal. It is set up on short notice through mutual friends in Winnipeg, and is carried out in the apartment of those friends before the four of us go out to socialize. This means that the interview served as both an academic exercise and an introduction to McLean, which sometimes made it difficult to maintain an interview-like, rather than conversational, tone. However, despite the short notice, McLean was also one of only two interviewees to show up with support materials, including MP3s of The Paperbacks' catalogue and a printout of all of the band's lyrics.

### 4.5.1 The interview

As indicated by McLean's preparation for the interview, he was quite willing to address his usage of other people's creative materials in his work, and his comments in general indicate that he believes there should be no stigma in such borrowing. Despite that openness, he has a surprising amount of difficulty coming up with examples of quotation on his part. In response to my very first

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<sup>6</sup>Now based in Vancouver, Endearing was home to a number of acts that tended towards the poppier side of guitar-based music, and while it never had the breakthrough success of Vancouver's similar Mint Records (home to The New Pornographers), releases from esteemed Canadian songwriters like Destroyer and Julie Doiron gave the label a certain cachet within Canada's independent music community.



question, whether he has ever used direct quotation in his lyrics, he pauses for an exceptionally long time before saying “I’ve stolen titles. I’m trying to think if there’s any quotes.”

In fact, McLean never comes up with an example of direct lyrical quotation—although the considerable length of time he spends trying to do so and his visible frustration when he cannot makes it seem likely that some examples of quotation do exist in his work. The closest he comes is providing song titles that were taken from other works, primarily works of literature. These song titles will reference a work that helped shape the content of a song, even if that shaping is far from obvious. For example, McLean cites the title “Umbrella Skeletons” (off of *Lit From Within*) as a reference to “that Auster book, *New York Stories*,<sup>7</sup>” he explains

There’s this passage where they find an umbrella in the garbage and it doesn’t have cloth on it anymore, and he’s like “at what point does it stop being an umbrella? Is this an umbrella, because it doesn’t serve the function of one any longer?” It’s not a major passage in the story... and then if I went through the lyrics of [“Umbrella Skeletons,”] I don’t think it refers to it at all.

Similarly, when describing his “The Coast Starlight,” McLean recalls the song’s genesis in a book by William Vollmann that reminded him of a trip he had once taken.

There’s a part in [the book] where he describes how it looks to sit on the train and see the California coast at night, and it reminded me of doing that trip. So the imagery [in the song] is from my experience, but it was called up by reading something that reminded me of it, or that described it and felt like the right thing, like, felt like it was similar.

In other words, the book served as a lens through which McLean could look back on his own experience, and inspired him to turn that experience into a song. Yet the only reference to the

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<sup>7</sup>The actual title is *The New York Trilogy*, collecting Paul Auster’s *City of Glass*, *Ghosts*, and *The Locked Room*.

book comes in one of the song's lyrics, "Shadows fall past ancient redwood trees to crawl the leaden darkness of a lettuce field," which is a reference to a scene in the book that resonated with McLean. Asked to recall the passage in the book, though, he answers "I don't even remember if it was a line, or if it was just looking out at the lettuce fields. But the whole feel was suggested by it, because it was accurate to what my experience was."

McLean returns often to that idea of "feel." While he can't recall any direct lyrical quotation and only a handful of examples of musical quotation—borrowing a Guns 'n' Roses riff in one song and half a verse's worth of a Wedding Present melody in another—he says that trying to capture the feel of a specific song is "wildly" common in his work. Pinning down exactly what is meant by "feel" is difficult, but at one point McLean addressed the point with slightly different terminology, saying

...The implication of a lot of things are from other sources. A lot of times, I've mostly written in apartments for my whole life, so I usually don't sing out loud when I'm putting things together. So there's often a voice in my head that I think I am, which is usually someone else's, and that's sometimes a conduit to a type of melody, a type of chord structure....

...Because of the circumstances, because I'm not hearing myself to remember who I am, it's easy to get lost. Especially if you've been listening to something a lot lately, or something is a part of your musical DNA, [there's a tendency] to sort of fall back on that, or not to reference it, but [to] continue with it.

During the songwriting process, then, McLean will find himself imagining that he is, or is trying to channel, the singer from another band; his melodies will not imitate a particular song but rather will emulate that singer's own idiosyncrasies. And though this process superficially sounds like it could lead to a lack of coherence or originality in McLean's work, he feels this is not the case.

The song becomes his as soon as he begins “singing it loudly through a microphone,” because he has “a specific voice that doesn’t match any of the stuff” he was imagining during the songwriting process. “As soon as it goes into that realm” of vocal delivery, “the genesis of it is already dead.”

McLean also addresses the nature of creativity and the perceived role of originality at various points in the interview. He seems to view originality as something that can only evolve over time, as

You start off aping other styles, then you sound like that style. And then you probably develop something within the realm of that style, and... afterwards, after having that core or whatever that style is that’s developed out of basically ripping off something exactly, then when you take in new influences as you get older or as your tastes change, whatever else you’re taking in gets syphoned through that style. So it’s not so much aping as reinterpreting through whatever the things you developed for how you perform.

Again, there is the suggestion that most songwriters are simply imitating other songwriters, and that it is the combination of imitations that becomes interesting. Which makes sense, given that McLean feels that “pick[ing] out bits of melody and us[ing] them” in new compositions is “probably the basis of popular music in general,” and that originality isn’t “even in the top 10” most important things about making music. It’s a view that he applies in both directions, too, saying he “would not be bothered” if he came across a song on the radio that was substantially similar to one of his own.

#### 4.6 John K. Samson

Although his current musical output is as indebted to folk as to the rock and roll tradition, John K. Samson’s early career was firmly rooted in the punk rock world. In 1991, he joined Winnipeg punk band Propagandhi as their third bass player; within two years, the band would release a full-length

album on Fat Wreck Chords, the southern California label run by NoFX's Fat Mike and one of the most prominent labels in the early '90s punk scene.

Propagandhi was known as much for its hard-left politics as for its thrash-influenced punk sound, as reflected in song titles like "...And We Thought Nation States Were a Bad Idea" and "Resisting Tyrannical Government," although Samson's two contributions as a songwriter were both softer in tone and less overtly political.

Samson left Propagandhi to form The Weakerthans in 1997, serving as the guitarist, vocalist and principal songwriter. His songwriting has continued in the vein of those first two Propagandhi songs, focussing on introspection, storytelling and evocative wordplay, and the band has released four full-length records, a live album and an EP on prominent independent record label Epitaph<sup>8</sup>. Samson himself has released two full-length solo albums, the first a cassette release in 1993 and the second on Epitaph sub-label Anti- Records in 2012, in addition to three EPs. The most consistent aspect of his songwriting has been a focus on Winnipeg and the surrounding areas, which explicitly serves as either the setting or subject for much of his recorded output.

Samson is one of only two songwriters to request that the interview take place at his home, offering me tea before we begin and doing his best to ensure that I am at ease. He answers the questions deliberately, taking time to compose his answers but never coming across as hesitant. Conveniently, he had already spent a good deal of time reflecting on his career as a lyricist for *Lyrics and Poems, 1997-2012*, a compilation of his written output released the month prior to our interview through his own Arbeiter Ring Publishing (whose slogan, in keeping with the thread of Samson's artistic career, is "Our Books Lean Left.")

#### 4.6.1 The Interview

Unsurprisingly for a writer who references Noam Chomsky, Marx and union hymns, Samson isn't comfortable with the concept of ownership of ideas. Early on, he describes his time in "the punk

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<sup>8</sup>The band's first two albums were originally released on Winnipeg's G7 Welcoming Committee Records and have since been reissued by Epitaph.

rock scene” where people “were really excited about theft” of “riffs and chord changes and structures of songs,” noting that “we thought of it as stealing at the time” and were “thinking that we were being all rebellious by ripping off Platinum Blonde.” In addition to the thrill of rebelliousness, he also attributes this intentional theft to “the readymade aspect” of existing works, a term used by dadaist artists to describe found objects that could be recontextualized as artistic works—Marcel Duchamp’s urinal being a prime example.

Expanding on his distrust of “the idea of ownership of any kind of art,” Samson argues that

songs and pieces of art have a lot less to do with their makers than we think they do... They have a life of their own outside of the creator, the artistic creator, and that life is more important than anything else. And that therefore rights to that work belong to the interpreters of the work as much as the inventors of the work.

As well-articulated as his skepticism regarding authorship is, Samson admits it hasn’t been put to the test. Despite his prominence in the Canadian musical landscape, he says he “can’t think of any instances where anybody’s used something directly” (in other words, his work has never been plagiarized to the best of his knowledge), but he believes he would be “quite comfortable with that.” In contrast to his own admission about his and his peers’ theft of riffs and chord changes, he adds that he “would hope that there would be plagiarism of theme and approach” rather than of lyrical or musical content, citing “the use of voice and the obsession with detail and locality” as the type of elements of his work that he would be most comfortable seeing imitated. However, while that would be his preference, he doesn’t rule out other “plagiarisms”.

In his own work, Samson himself has made use of quotation and allusion, both musical and lyrical, throughout his career. Among the examples he provides are the use of a line from Ralph Chapman’s union anthem “Solidarity Forever” in his song “Pamphleteer,” an appropriation of a hymn by Bach in his “Stop Error,” and the use of the structure of Bob Dylan’s “When I Paint My Masterpiece” in his “When I Write My Master’s Thesis,” the latter two of which appear on his most

recent solo album. The first two of these examples each borrow from public domain works. The last, though, is still under copyright, and while Samson doesn't use Dylan's melody, the influence is clear:

The first line [of Dylan's song] is "Oh the streets of Rome are filled with rubble, ancient footprints are everywhere," and my first line is "Oh the streets of *Grand Theft Auto: San Andreas* are filled with smoke." The next verse is "Oh the hours that I spent inside the Colosseum," and my verse started "Oh the hours I spent in the archives, wearing cotton gloves." So [the structure] was there, it was kind of handed to me in a way. I was just like, well, there you go. It's almost a parody.

He also goes on to describe the song as either an homage or a satire rather than a parody. It's unclear whether this description was meant to justify the use, but if it is, it's worth noting that unlike American law, Canadian copyright law did not explicitly protect parody at the time of the song's release, and neither set of laws has a provision specifically protecting homage.

Lyrically, Samson's borrowing often takes the form of an "exercise," using an existing line as a jumping-off point for a new thought as in the previous example, or committing to writing a series of songs based on Edward Hopper paintings. Musically, he seems more willing to appropriate, saying "theft is just inevitable," as "especially in pop music, there are these melodies and structures that are just there for you to use, that you don't have to feel either ashamed or gleeful in using. They're just there; they're useful." Still, aside from the Bach melody, he only offers one example of musical borrowing, claiming his "Reconstruction Site" "is 'Sweet Home Alabama,' which got stuck in my head one day and I just had to keep playing it over and over again." Oddly, he says that he didn't realize his song was similar to Lynyrd Skynyrd's until he brought it to the rest of the band; how this reconciles with having "to keep playing it" is unclear.

While Samson is skeptical about ownership of ideas and claims that there has never been a time

in his career where the legal consequences of a copyright violation would have prevented him from creating a work, his views become more complex when discussing his role in the literary world. Here, he feels that since the works are “longer and bigger and more complex,” copyright protection is more necessary. As he explains,

We assert the copyright rights of all our authors in our books, but mostly do so in the hopes that they’ll get paid for things, because they need to make a living. Writers don’t have radio to play them, to get their SOCAN cheques from. That’s one of the troubling things about [Bill] C-11 and the new copyright laws, is that they’re kind of neglecting that whole idea of how writers and publishers are supposed to get paid.

In this case, copyright law is still not a moral issue—or at least, he is still not explicitly claiming that borrowing or copying ideas is inherently wrong. Rather, he frames the argument entirely in economic terms, which may point towards a difference in the views of entrepreneurs and creators.

#### 4.7 Foon Yap

Although she has been a recognizable figure in Calgary’s music scene since she began playing violin for the chamber-folk ensemble Woodpigeon in the mid-2000s, Foon Yap had only been “seriously” writing music for approximately two years at the time of our interview (she says she’s had impulses to that end for her whole life). As such, she is easily the least experienced of the songwriters spoken to for this project, and the one most explicitly still trying to figure out her “sound,” and her place in the musical landscape.

In terms of genre, Yap is difficult to pin down. Her training in classical violin and appreciation for traditional Chinese music (her parents are first-generation immigrants to Canada) are given voice in her FOONYAP project, which largely consists of layered violin and vocal loops,

with some guitar and occasional percussion contributions from collaborators. Despite these influences, though, FOONYAP's music could hardly be called traditional, incorporating both pop and experimental impulses to create songs that don't fall into an easy category.

Yap has actually coined a genre for her other project, the more aggressive FOONYAP and the Roar: "Vampire sex metal disco." This is a fairly accurate descriptor, actually—the music is highly theatrical and often danceable, with occasional breakdowns of abrasive noise and shouting. Unexpected moments abound, from a brief ho-down in the midst of one song to another that emulates '60s girl group pop before collapsing into a shrieking cacophony.

Her one full-length album to date actually comprises two EPs, each of which is united more by underlying concept than by any musical unity. *The Mes, The Mys and the Swimming Pool* is "inspired by Hegel and Neitzsche," and was composed as a part of Yap's honours thesis, while the second half, *Foon\**, is "inspired by the boolean search term;" these lyrical concepts help to tie together the album's disparate musical approaches.

Yap was the first musician interviewed for this project, and as such the conversation was less structured than most. We spoke in a coffee shop of her choice in Calgary's Kensington neighbourhood, which was meant to provide a comfortable environment for conversation but turned out to be quite distracting (or "overstimulating," as she puts it), and particularly at the start of the conversation it was difficult to get into any in-depth answers. However, Yap did come prepared with her songwriting notebooks, and was eventually able to provide detailed insights that were invaluable for shaping the interviews that would follow.

#### 4.7.1 The Interview

While she doesn't use direct quotations in her lyrics, Yap is highly prone to drawing influence from other works, both musical and non-musical. This rarely amounts to borrowing a specific rhythm or melody (although she does provide examples of just that). Instead, Yap is "inspired more by the structure or form of a work, more than its actual impression."

This can mean a variety of things. Certain songs of hers take inspiration from Mao's *Little Red*



*Book*, specifically “the forcefulness of the words,” which leads to “phrases [that] are very short and succinct and metaphorical.” With Bjork’s album *Vespertine*, Yap noticed the Icelandic singer “has three notes, three tones that repeat through the whole album... [which] made me realize it’s OK to repeat those tones throughout an album and throughout my songs, as a recurring theme.” Again and again, she’ll mention borrowing concepts or feelings from certain works, often characterizing the borrowing as realizing she was allowed to write music in a certain way, rather than sticking to other genre conventions. Sometimes, these influences work in ways that defy conventional interpretation, such as noting that the beat from a certain song was at least partially inspired by Nietzsche. In a detailed breakdown of her song “Introduction,” she explains that

The beats were inspired by... a UK artist [who] uses electronic beats, but it’s still folk.... Also, the plucking in “Introduction,” on the mandobird, is inspired by harpsichord from Bach, easily. The style of singing is inspired, I would say, by Portishead. And kind of the middle-ish part has kind of a textural landscape that’s as big as Asian music—Chinese music is usually very big.

This list surprises even Yap herself, who “didn’t realize there were so many” influences at play, despite being “definitely conscious” of them during the songwriting process. And in spite of the surprise, she believes that she would be able to provide similar influential breakdowns of many of her songs.

Yet Yap isn’t worried about her works coming across as derivative, even with this plethora of influences. This is partly because of her belief that “everything an artist reinterprets is transformative, just by the nature of you doing it,” and partly because the nature of her creative process involves being inspired by a wide variety of musical and non-musical sources, creating a blend that is unique to her as an artist.

Yap wasn’t always so comfortable taking inspiration from other artists. At the start of her songwriting career, she was “very hesitant to be borrowing or being inspired by other artists, because

[she] didn't want to sound like them." It wasn't until she got the advice of Woodpigeon songwriter Mark Hamilton, who "always encouraged [her] to listen and to admire other people's work" that she became more comfortable with the process<sup>9</sup>, eventually deciding " 'that you really become a better artist if you are a sponge.' "

This realization ended up pushing Yap to discard the idea of authorship as "a mainstream idea" that doesn't reflect artistic reality:

[Songwriting is] not a purely creative, individual process. There's a word for that in communications—the auteur. It's not like that at all. I totally realize that I'm in my society and in my culture, and I'm expressing things because I live in my society. I think because I subscribed to that idea of auteurship, I thought that was wrong. I thought that inspiration comes purely from yourself.

There is also a slight element of the mystical to Yap's view of songwriting. She notes that her songwriting process consists of a long period of research, after which she will sit down and imagine herself hearing the already-written song, because "if you have a good song, it has its own flow, and I try not to obstruct that flow." She'll then note down the song as she hears it, and eventually fine-tune it through playing it with her band. The idea persists, though, that it is not really her writing the song, that she is acting as a conduit through which the song can manifest.

One of the most interesting observations Yap makes is between a sort of active and passive form of inspiration, or what she calls "extroverted" and "introverted" processes:

The process for FOONYAP is usually just an Asian melody that comes into my head from, I don't know where it comes from. And then I might try some elements that have been inspired from others that I've always wanted to try. Whereas Foonyap and the Roar is

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<sup>9</sup>There is undoubtedly an irony to Yap effectively emulating another songwriter's willingness to emulate other songwriters.

very much more putting together an outfit... The melodies still come from me, but they don't come from my memory as much.

...What I mean by that is that a lot of the influences I have make their way into Foonyap and the Roar very methodically, whereas for FOONYAP, the main body of the work is this feeling or sentiment or memory.”

While other songwriters hint at this distinction, describing intentionally playing up a particular influence versus being a product of the various songs they've consumed throughout their lives, Yap is the only one who explicitly separates the two types of creation—and is certainly the only one who has created two different projects split along those lines. Whether these projects start to bleed into one another as Yap becomes more experienced as a songwriter will certainly be interesting to see.

## Chapter 5

### Analysis: Examining the insights

Having briefly introduced the seven interview subjects as well as providing highlights from the interviews, the next step is to look at the interviews as a whole. As mentioned in the methodology chapter, the small number of interviewees means that any trends noted here should not be seen as statistically significant for the category of songwriters as a whole, or even for the considerably more narrow category of Western Canadian “indie rock” songwriters. Significant further study would be required before any attempts were made to generalize the results.

What the songwriters’ responses do provide, though, is an introductory insight into their creative process and their beliefs about their work. And as we shall see, these insights are often quite removed from the author-led Romantic assumptions that underlie most western copyright law.

#### 5.1 Terminology

The songwriters themselves use many terms to describe the roles other works have played in their songwriting process, from the intentionally provocative use of terms like “stealing” and “ripping off” to general descriptions of unconscious borrowing. There were, however, a few broad categories that consistently emerged from the discussions. The following terms weren’t necessarily used consistently (or at all) by the interviewees, but they do encapsulate most of the ideas that were discussed.

##### 5.1.1 Elements of a song

Determining the elements that actually constitute a song is a surprisingly difficult task, a challenge best illustrated by thinking about the example of a cover song. While many covers attempt to recreate the original song as accurately and faithfully as possible, there are at least as many others

that dramatically change their source material for aesthetic or even satirical purposes.

Aretha Franklin's cover of Otis Redding's "Respect," for example, removes most of the horn line from the original and adds what would become an iconic guitar line. Lyrically it changes very little, but the simple fact that the song is being sung by a woman has a dramatic effect on the reading of the song's chorus, which demands "a little respect when I come home," changing it from a call for subordination on the part of women to an anthem of liberation. Despite the difference in lyrical meaning, the new hook and a variety of other changes, both performances are considered renditions of the same song.

Those changes are minor when compared to something like Patti Smith's cover of Van Morrison's "Gloria" (originally performed with Morrison's R&B group, Them), which transforms the two-and-a-half minute original into a nearly six-minute exploration of religion and sexual frustration. Smith initially slows the song down, beginning with dirge-like piano and her own vastly different lyrics, gradually building to a guitar-heavy frenzy over the course of three minutes before finally launching into Morrison's chorus. It is in many ways an entirely different piece of music—and is different enough from Morrison's original that he is credited jointly with Smith as a co-writer—but again, there is still some sense in which they are both versions of the same song.

As difficult as it is to pin down just what constitutes a particular song, there are certain elements that are seen as most important. In a Central District Court of California decision in a case between a jazz musician and hip hop artists the Beastie Boys, the judge stated that "a musical composition consists of rhythm, harmony and melody," and that other elements, while part of individual performances, were not part of the composition itself (Toynbee, 2006). This may be true from a copyright perspective, but from the view of the songwriters interviewed for this project (the vast majority of whom admit to a minor knowledge of music theory and an equally limited knowledge of copyright law), the distinction between composition and performance has little bearing on how they view a song. For them, the key elements of a song seem to be lyrics, melody (typically referring to the vocal melody), the chord progression, the rhythm, the structure and the feel.

The elements are listed in decreasing order of importance to traditional western views of song-writing. In cases of alleged copyright infringement, melody and lyrics are typically the most heavily considered elements; it was the melodic similarity between George Harrison's "My Sweet Lord" and the Chiffons' "He's So Fine" that landed the former Beatle in trouble, for example (Campbell, 2007). Chord progressions and rhythms are much less likely to lead to claims of infringement, as can be seen from the number of blues songs that use what is commonly referred to as the blues progression; and despite the judge in the Beastie Boys case's mentioning of rhythm, the preponderance of early rock 'n' roll songs that made use of the "Bo Diddley beat," the rhythmic restrictions in Latin genres like the samba or bossa nova, or the regimenting of electronic music genres by their rhythmic backing are just a few examples of how songs have shared rhythms without running into copyright issues.<sup>1</sup>

The remaining two elements are more vague in their usage by the interviewees. Structure encompasses elements like the rhyme scheme as well as the arrangement of verses, choruses and bridges. The term also seems to refer to the openness of a song to reinterpretation—Matt Masters contrasts the rigid songs of Hank Williams with the more mutable works of Bruce Springsteen, whose songs "have room for saxophone solos, they have room for guitar solos. If they have to go on for 10 minutes with a 12-piece band, it can do that,"

Feel is the most poorly defined of all the elements discussed. It seems to include the timbre (the aural quality that distinguishes a note on a trumpet from the same note on a French horn, say, or between different types of guitars) of the vocals and the various instruments, but is certainly not limited to just that. In fact, "feel" seems to describe more of an amalgamation of all the other elements and the way they interact with each other. It is the impression that a song leaves, which is the product of the interplay of all the elements but exists independently of them,<sup>2</sup> as the songwriters often discussed trying to replicate the feel of another song without specifically replicating any of

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<sup>1</sup>Given all that, it seems likely that the judge here was referring to the rhythm inherent in a song's melody, rather than the rhythm of the backbeat.

<sup>2</sup>Daniel Levitin (2007) wrote on just how identifiable a song's timbral qualities are, describing how subjects were able to identify songs based on split-second samples of the songs, far too short for melodic or rhythmic cues to be perceived.

the other elements.

### 5.1.2 Types of borrowing

With the relevant elements identified, the next step is to discuss how those elements are used. For the purposes of this thesis, the term “borrowing” will be used to describe the entirety of ways that songwriters can use the works of others<sup>3</sup> in their own creative process, from the conscious plagiarism of a lyric to unconsciously creating a melody that vaguely resembles a half-remembered work from the past. The term is not meant to imply any moral or legal grounding—it is not, for example, meant to be contrasted with “theft,” although I recognize it likely carries that connotation. But borrowing in this context includes uses that are explicitly legal as well as uses that are explicitly illegal and everything in between. Put as straightforwardly as possible, borrowing here means finding something useful in a previously created work and applying it in some way in the creation of a new work.

Within the category of borrowing, there are (at least) three main sub-categories, distinguished by the directness of the connection with the previously created work, which I will refer to as quotation, appropriation, and inspiration.

The acts I refer to as quotation involve the direct re-use of material from a previously created work. Perhaps the most straightforward example of this would be the use of sampling, which literally re-uses a previous recording, but quotation can work in a variety of ways. For some elements, these uses are obvious—a lyric may quote from the lyrics of another song or from the dialogue of a film, for example, while a melody can be copied exactly from another musical source. The matter becomes more complicated with the less well-defined elements of the song: the feel, for example, is the element that the songwriters were most likely to admit to trying to replicate, but the concept is so nebulous that the idea of direct quotation of a song’s feel is nearly meaningless.

Although the term appropriation is used in many artistic contexts to describe the use of bor-

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<sup>3</sup>The term “work” here refers to any creation that could be covered by copyright, whether or not it is currently copyrighted or in the public domain.

rowed elements directly in a new work (the “readymades” referenced in the discussion of the interview with John K. Samson providing an excellent example of what is meant by the term), this thesis’ use of the word is meant slightly differently: in contrast to directly reusing existing elements, which is already covered by quotation, appropriation here refers to keeping a recognizable portion of the source material while altering it enough that it can be considered new. Dan Mangan’s use of plot and character elements from Stephen King’s *Stand By Me* in his “Rows of Houses,” for example, is very clearly building from King’s work, but personalizing it. Other examples, like Mangan’s use of the phrase “the hills are alive with...” and Samson’s reworking of lines from Bob Dylan’s “When I Paint My Masterpiece” would also fall under what is meant here by appropriation; both examples involve quoting a small amount of the original works, but then twisting them into something seemingly new.

Inspiration is here meant to describe the farthest end of the borrowing spectrum. If quotation can be directly traced to its source and appropriation can be tracked as a process (starting from a certain chord progression, say, and altering certain elements), inspiration is not so easily tracked. Sometimes this is because the form of the original work and that of the new work are different enough that comparison becomes impossible—Samson’s capturing the mood of an Edward Hopper painting in a melody, for example. Other times it’s because the borrowed element is too general, like Foon Yap’s emulation of the “forcefulness” of the language in Mao’s *Little Red Book* or Doug McLean’s attempts to channel various singers when coming up with his vocal melodies.

The distinctions between the three categories of borrowing are sometimes obvious, but not always. To again refer to Samson’s reworking of Dylan, transforming the line “The streets of Rome are filled with rubble” to “Oh the streets of Grand Theft Auto: San Andreas fill with smoke” seems a step beyond straight quotation—it changes the setting, the verb tense and the last noun. But if it had only changed one or two of those elements, would it then be considered quotation?



## 5.2 Attitudes

While there is no overall consensus between the songwriters regarding what exactly they are willing to borrow, there are a few notable trends. These include a general willingness to borrow from other works, an openness about such borrowing, and a general prioritization of social and moral considerations above legal ones when it comes to choosing whether to borrow from a work. The details regarding each of these subjects changes from one interviewee to the next, but in the broad strokes at least, these songwriters all seem to be in agreement.

### 5.2.1 Willingness to borrow

Perhaps the most significant finding of these interviews is that all seven songwriters stated they had often borrowed from the works of others in their own songwriting. The amount of the borrowing varied dramatically: McLean claimed it was “wildly” common for him to attempt to channel another singer when writing and Yap was able to break down selected songs of hers into constituent parts borrowed from other works, while Samson estimated he would be able to do the same with roughly a third of his catalogue.<sup>4</sup> Bagley gleefully spoke of “ripping off” specific riffs and lyrics, and Hutzulak described compiling songs from phrases drawn from a variety of publications, and working on a current project whose lyrics would be taken from technical guides.

Mangan and Masters were both more hesitant in this regard, with Mangan claiming he rarely directly borrowed from other works, at least consciously, and Masters saying that he would only be able to do breakdowns of the sort offered by Yap on a “minute” percentage of his catalogue. Nonetheless, both of them offered examples of quotation and appropriation in their work, and both spoke of how they couldn’t help but be influenced by the works they had listened to in the past.

As could be expected, the songwriters admitted to being inspired by other works far more often than using appropriation or quotation. The more direct the connection between the original and the new work, the less likely the songwriters were to practice that type of borrowing. Nevertheless, all

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<sup>4</sup>Or at least that he could have at some point near when the songwriting was complete, though that knowledge faded with time

seven had engaged in direct quotation of some type in their work. Yap was the only one to deny using direct quotations in her lyrics, but she did admit to using melodic lines from the pre-sets that came with her recording software, directly quoting those melodies in the composition of one of her songs. She also stated that she wasn't against lyrical quotation in principle. And while some of the others had difficulty coming up with examples of lyrical quotation—McLean claimed to have done it but couldn't cite any examples outside of song titles, and Samson's chosen examples all involved enough wordplay to fall closer to appropriation than quotation—they all unhesitatingly answered yes when asked if they had used lyrical quotation.

As for the question of direct musical quotation, the interviewees were more split on the issue. In addition to Yap, most of the other songwriters admitted to using some amount of musical quotation: McLean described more than one instance of borrowing a melody, once as a nod to a character in his song and another time as a temporary measure that became a permanent part of the song, though he admits that such borrowing is rare in his catalogue. Samson wrote a song for his newest solo album based on a piece by Bach, reusing the same melody in a new arrangement with new lyrics. Bagley also wrote new lyrics to a public domain composition (Leadbelly's "In the Pines") and describes much of his early work as "rip-offs" of garage rock outfits like The Sonics and the Remains, the latter of which he describes as another "rip-off" of the Kinks—making his knock-offs two degrees removed from the source. He also spoke admiringly of acts like the Cramps whose work was often heavily borrowed from obscure rockabilly records, and described borrowing fragments of chord progressions from other works.

Mangan, on the other hand, seemed to view most musical quotation as a form of cheating, although his statement that "...there's probably been a time or two when I heard a song... and then wrote something in a similar rhythm or something" does indicate his acceptance of a hierarchy within the elements of a song; he also felt that a certain amount of unconscious borrowing was almost inevitable, a topic that will be discussed further in the next section. Masters and Hutzulak were of similar opinions, emphasizing that it wasn't in their style to borrow directly because they

prized originality in their work—an interesting comment from Masters in particular, given his admitted indebtedness to the traditions and song structures of early country musicians like Hank Williams.

But as mentioned in the description of the elements of songwriting, a song's structure is seen as a perfectly reasonable element to borrow. If it weren't, the tradition of the of the pop song arguably could not exist. As Mangan explains,

Simply the fact that if I'm writing a song, my natural tendency is at some point to throw in a chorus, or a chorus-like transition, that's because I've heard a billion choruses in my life. If I grew up in the woods somewhere, and I was writing a song, maybe it would just be a series of slapping a stick on a tree, and that's a song. We can't help but be entirely carved by the knife of society.

Feel, however, is the element that is most likely to be borrowed, and is also the element that's most difficult to split into the categories of quotation, appropriation and inspiration. When Masters tells his band that a song should feel like it comes from Aerosmith's *Toys in the Attic* or Bagley writes a riff that emulates John Carpenter's score to *Halloween*, there's a tendency to describe that as influence—they are not quoting a particular melody or lyric, and are trying to create something new. Emulating the feel often does involve attempts to quote certain elements of a song, though: typically the timbral or performative elements, which are not covered under the songwriting copyright. It would be interesting to learn whether the shared belief that feel is the most acceptable element to borrow stems from its less precise nature, from copyright's placing it on a lower standing (which some argue is merely an accident of notation (Toynbee, 2006), or from something else altogether, particularly as the rise of sampling places timbre and feel in an increasingly prized position.

If the general willingness to emulate the feel of a song stems from the impossibility of directly quoting it (outside of the sampling of a particular recording, that is), it's worth noting that two

of the songwriters interviewed for this project attributed that same impossibility to essentially all forms of musical quotation. Yap describes how, regardless of how directly you're inspired by another work, "when you sit down to do it, it always comes out completely different," and that conscious efforts to personalize a song are somewhat redundant because of that. McLean mentions that his work becomes distinct from its sources when he performs it, because "I have a specific voice that doesn't match any of the stuff [that he tries to emulate]. As soon as it goes into that realm, the genesis of it is already dead"—a sentiment echoed by Samson when he says that "by the time [a song] gets finished in my mind, I've cut those direct things that were there at one point. [They] have been softened and burnished to the point that I can't see them any more."

#### Unconscious borrowing

Regardless of their willingness to consciously borrow from other works, nearly every songwriter I spoke with had experience with the issue of unconscious borrowing—of writing a song only to later realize that it contains elements of other songs, to the point that it could even be considered plagiarism. This is the basis of one of the more famous copyright lawsuits of the 20th century, between George Harrison (along with his publishing companies and record label) and Bright Tunes, owners of the copyright in the song "He's So Fine," recorded by the Chiffons (Self, 1993).

The suit and subsequent legal proceedings established that Harrison's song "My Sweet Lord" was "virtually identical" to the Chiffons' song, and too similar for mere chance, ruling that Harrison had in fact violated Bright Tunes' copyright. Harrison had provided evidence to show that the song was composed organically and with no intent to copy an original work, an argument that the judge did not refute. Instead, the judge ascribed the similarities to "subconscious plagiarism," pointing out that copyright law does not require "intent to infringe" in order to find infringement (Self, 1993).

This case gained prominence thanks to the involvement of a former Beatle, but such infringement seems to be a common occurrence. In a study by Perfect and Stark, it was found that people are actually quite bad at distinguishing their ideas from those of others, particularly "where other

people's ideas have been worked on and improved" (Perfect & Stark, 2008). If such reworking has occurred, they found a nearly 50 per cent chance that their subjects would incorrectly believe they had come up with the original idea rather than simply reworking it—a potentially dangerous situation for songwriters who may firmly and innocently believe their work is wholly original.

If the songwriters interviewed for this project are at all reflective of the field as a whole, such unconscious borrowing is common. Mangan, McLean, Masters, Samson and Yap all have examples of unconscious borrowing of the works of others, and Hutzulak mentions that he has had instances of unintentional self-plagiarism. That Bagley is the only one who doesn't mention such an incident is somewhat surprising, but may be explained by his prolific use of conscious borrowing—his awareness of the elements he borrows and adapts to his musical and lyrical purposes may be extensive enough to rule out any accidental plagiarism.

As for the others, their acts of unconscious borrowing take a variety of forms. Samson recalls showing one of his songs to his band, only to have them point out its resemblance to "Sweet Home Alabama," one of Samson's "least favourite songs in the world." As he puts it,

It wasn't until I brought it to the band and they were like, "Oh God, here we go." Because I couldn't really tell until there was other instrumentation. When you sit down and play "Sweet Home Alabama", it doesn't sound so bad. But then when you put the bass and drums in...

Despite the resemblance, Samson still wanted to use the song, leaving it up to the band to help distinguish the song (he jokes that his reaction was to say "It's your problem now"). And in the end, he believes they succeeded, as the result is "this weird, weird song that I really like. It's one of my favourites."

Samson also cited a tendency to constantly imitate one particular song. He mentions "this Sarah Harmer song that I heard and have never stopped trying to write... When I sit down to write a song, it's this weird neutral gear. 'Basement Apartment' by Sarah Harmer just starts playing in

my head.” Again, though, he is conscious enough of it that he recognizes when it’s happening, and stops the potential plagiarism short.

Not all of the songwriters discovered their borrowing so early in the process. For Mangan, it wasn’t until “months after” writing one of his songs that he noticed its melodic similarity to a song by the Kinks. The melodic fragment only lasts for the opening of the verse, with the rest of the song bearing no resemblance to the Kinks’ song, so Mangan believes “it’s nothing to worry about” since “it’s not like I ripped off the entire song,” but he still found the incident “uncanny.”

Asked if it could’ve been coincidence, Mangan sums up the situation by saying

That comes back to the subconscious element. You know, it’s like I’m sure many songwriters have written something and thought, “Oh, that’s very similar to ‘Yesterday,’ or ‘Baby You can Drive My Car.’” If you’re somebody who’s been listening to music your whole life, think of how many thousands of melodies you’ve heard. And there’s only like 12 notes in a chromatic scale, so...

Mangan’s choice of “Yesterday” as an example was entirely arbitrary, but it is an interesting example. As mentioned in the literature review, when Paul McCartney wrote the song, he spent weeks convinced that he had heard the melody elsewhere and was merely copying it. It took consultations with numerous friends before he accepted that it was an original work rather than a standard that he couldn’t quite identify (McIntyre, 2006)

Yap experienced something oddly similar to this in writing one of her songs, “Me Plus You.” She “seriously thought [she] was stealing Kris Ellestad’s song [‘The Secret’], like directly, for the longest time.” She even know specifically which song she thought she was stealing from, and wrestled with whether she was comfortable with that sort of direct borrowing. After finishing her song, though, she listened to both and decided that they were actually “completely different,” although it wasn’t that she had misremembered Ellestad’s song. She had been “inspired by the feel” of “The Secret,” but when she sat down to write “Me Plus You” it just emerged as “a completely

different song.”

Masters provided two examples of unconscious borrowing, one from very early in his song-writing career and the second after he’d achieved significant recognition within Calgary. The first incident was when at the age of 15 he shared “pretty much the first song [he] ever wrote” with a friend, who responded that “It’s a great song, Matt. It’s ‘Heart of Gold’ by Neil Young.” With the similarity pointed out, Masters decided the song was “obviously not valuable,” and scrapped it. The second incident was “Home at the Dome,” and as described in the data chapter, he was much more able to laugh off his unconscious plagiarism the second time around.

At least in Masters’ case, then, increased confidence as a songwriter led to his being more comfortable with unconscious borrowing. This, along with Mangan’s comments about artists inevitably being a product of the art they consume, McLean’s lack of concern when discovering similarities between one of his songs and a track by U2, and Perfect and Stark’s study of the difficulty in properly identifying one’s own ideas all indicate that such borrowing could be widespread (2008). And as the Harrison case points out, confidence in one’s innocence of conscious plagiarism isn’t necessarily a defence in the world of copyright disputes. The legal framework certainly seems to discourage any such activity. So why do these songwriters seem so accepting of it?

### 5.2.2 Mitigating factors

It’s important to keep in mind that legality isn’t the only factor limiting songwriters’ use of others’ creative efforts. Although it receives the majority of the attention in most discussions of subjects like sampling (currently the most-discussed form of creative borrowing), copyright law is merely one of the forces acting on artists. For the songwriters interviewed in this project, in fact, copyright law seems to be the weakest of the forces—Samson pointed out that in his early days as a songwriter in Winnipeg’s punk scene, he and his friends were “really excited about theft” in a musical sense, seeing it as an act of rebellion.

None of the artists claimed to have a strong grasp of what the law allowed in terms of borrowing, and outside of sampling, only Yap claimed that the legality of borrowing would affect

her actions.<sup>5</sup> Instead, they used terms like “severely undereducated,” “not really familiar” or “marginally” familiar to describe their knowledge of the law, the latter term coming from Samson, who runs a literary publishing house. What knowledge they do describe is vague, and the terms “fair dealing” or even “fair use” didn’t come up in a single interview when discussing justifications for creative borrowing.

That seems to be largely because of a perceived link between legal risk and economic status. When asked why they hadn’t researched the law, the most common response was a variation on the idea that they were too economically insignificant to catch the eye of any copyright holders who’d be inclined to file suit. In this view, the legal threat is seen as an extension of an economic one, with the overall view being that the legality of the borrowing was secondary to its profitability; the only people who get punished are those who are financially successful enough to be worth punishing. As McLean puts it, “If someone’s extremely successful, they’ll be sued all the time for everything. And people will be looking for that stuff desperately. If they’re not, no one’s looking, no one cares, as far as I understand.”

While most of the songwriters claimed that the legal environment had little effect on their creative output, they did mention other forces that kept them from overusing direct quotation. There is a moral element at play entirely separately from the legal one, with Mangan describing a “natural guilt of ripping something off directly” that leads him to alter melodies rather than borrowing them directly, and Hutzulak saying that the use of existing music as “found art” is a sort of “cheating.” Bagley echoed that view, saying he’d be fine with another artist borrowing a riff from him because of the work involved in learning and replaying the riff, but sampling him (and thus presumably avoiding that work) would be problematic.

Despite being adamant that borrowing was a normal part of the artistic process, McLean came across as conflicted about the morality of such borrowing. He mentioned a concern about having someone “call [him] out” on his borrowing of a particular melody. However, when pressed on

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<sup>5</sup>Bagley did say that changing attitudes towards sampling have affected his willingness to use audio clips from films in his songs.



the issue, McLean clarified that he wouldn't feel guilt, "just concern about appearances" as being caught plagiarising means "the rest of your stuff is suspect." And when again asked to clarify what it would be "suspect" of, considering his lack of guilt and his belief that reusing bits of melody is "probably the basis of popular music in general," he reversed his previous answer, stating "maybe I don't care."

This exchange with McLean illustrates the overlap between the moral element and a social pressure, based in part on the expectation by the public that songwriting (and other art forms) should be based on originality. To again quote McLean,

I think that periodically people get hung up on originality or those kinds of things as being one of, maybe, the top three most important things about making music. Whereas I don't think it's even in the top 10.

McLean seems sincere in this belief, and his other statements about the importance of borrowing in the creative process and the appeal of familiar elements within songs reinforce the statement, and yet he clearly has some mixed feelings about how others would perceive his work if they knew the role of borrowed elements in his creative process.

There is a countervailing social pressure as well. The songwriters often mentioned the Easter-egg-like role of borrowed elements in their songs, describing the pleasurable feeling of fans approaching them and commenting on one of their lyrical or musical allusions. Mangan talked about it as a more subtle way of turning his fans on to the musicians who inspired him; Bagley says that some of his references exist almost entirely "so that Al from the Von Zippers will hear it and go 'hey.'" In both cases (and others), these borrowed melodic and lyrical fragments help to foster a sense of community among those who recognize them. As Michael Dunne says when discussing the numerous allusions to Irish poets and locales in the work of Van Morrison, such references

...constitute parts of what Umberto Eco would call his listeners' "intertextual encyclopaedia", the common body of cultural information

designated by John Hollander as “part of the portable library shared by the author and his ideal audience.” (Dunne, 2000, p. 26)

and that catching such references allows the audience to feel that much closer to reaching that ideal.

The use of attribution plays a role in mitigating both the moral and social forces. Although direct attribution of borrowed materials within a song is difficult to achieve, it was mentioned in the context of both stage banter and album design, and the purpose it serves is at least twofold. First, it clarifies that the borrowing is meant as an homage or tribute to the original creator, as it eliminates the chance that the author is a plagiarist trying to pass off someone else’s work as their own. Secondly, it creates a more clear trail by which the listener can find the source material, solidifying the social role of such borrowing.

There are some drawbacks to attribution, though. As Mangan says,

Rather than sending out a press release about how Dan Mangan loves Leonard Cohen, subtlety is always going to be a winning key. If you can be subtle about how you ripped off this person, it’s sort of more powerful, in a way.

Direct attribution in that case would change the reference from a subtle pointer that leads to feelings of belonging into a more direct plug, with no reward for the “insider” who catches the reference.

The last of the moderating forces that emerged from the interviews can best be described as aesthetic. Like the social pressure, this force can both encourage and discourage acts of creative borrowing—Bagley’s obvious pleasure in the low-class connotations of “rip offs” (to use his term) and Samson’s description of the rebelliousness inherent in ignoring the legal ownership of ideas both at least hint at an aesthetic of appropriation, and artistic movements like Dadaism and Situationism are hugely reliant on such an aesthetic (Marcus, 1990), and have inspired countless artists to follow in that path. However, in the course of the interviews for this thesis, aesthetics was more often used as a reason to avoid artistic borrowing, rather than to embrace it.

Hutzulak, for example, was hesitant to borrow from other musical works not because he viewed it as wrong in any legal or moral sense, but simply because he found such works uninteresting—especially lyrically. While he makes a habit of looking to other works for lyrical inspiration, including visual arts and technical writing, he says he “wouldn’t really consider quoting songs as sources” since “one of the big weaknesses in songwriting in general is the clichéd lyrics.” Masters’ statement that he is “totally open to using [creative borrowing] as a tool” but that “one of the things I really strive for is writing a new song” can also be read as a rejection of the aesthetic of appropriation in general, as the legality, morality or social “wrongness” of borrowing is being denied even as he is explaining why he doesn’t typically engage in it.

### 5.2.3 Beliefs about creativity

As the literature review describes in more detail, current theories on creativity fall broadly into three categories based on how much power they ascribe to the individual creator. The most individual-centric view, often referred to as the Romantic view, holds that creativity is the result of individual achievement. This doesn’t mean that the individual is working in a void—hardly anyone believes that new ideas spring forth out of nothingness—but it does emphasize the role of the creative genius, the one who combines existing ideas with their own insight to create something both novel and useful (Richards, 1996; Toynbee, 2006; Bloom, 1973).

The systems view takes a step back from the individual, arguing that creativity doesn’t make sense outside of a social environment. This view still allows a role for the individual, but only through their interaction with the domain (the existing symbol system) as established by the members of their field (those capable of affecting the domain). Without looking at all three elements, the concept of creativity becomes meaningless, at least according to those who ascribe to the systems view (McIntyre, 2008; Csikszentmihalyi, 1988).

Lastly, there are the views that essentially state that creativity is a myth. Of these theories, the most appealing is that of memetics, which claims that creative output like ideas, melodies and lyrics reproduce and evolve independently of human effort—that these thoughts use humanity as

a host, rather than humanity creating the thoughts through some special feature of our intellect (Blackmore, 2006).

While it's important to realize that songwriters and others who work in "creative" industries aren't necessarily experts in how creativity works, they certainly have views on how their own creativity manifests, and have likely spent more time than your average person thinking about just that. The question, then, is whether the songwriters interviewed here present any kind of consistent view of the creative process, and whether that view gives credence to any of the three schools of creativity theory.

### The creative process

Unsurprisingly, the songwriters I spoke with did not present a single, cohesive description of the creative process. This is partly because they weren't always asked directly about that process, but it's equally unlikely that such a description would emerge from further pressing on the subject—if it were a straightforward enough process to be discovered in a generalizable form through self-reflection, that would have been done long ago. The impossibility of the task is reflected in the artists' own descriptions of their creative processes, typically preceded by variations on the theme that they have no consistent process. Mangan puts it most straightforwardly, stating that

There are times where [his process is] very lyrics-forward. There are times where it's music-forward, and there are times where it's a blend of both. There are times where a song will get written as I'm recording it into a demo, into a computer, and other times it's a full song arranged and written, and it's never even touched a computer or a recording device.

Not all of the songwriters are quite as hesitant to pin down their process, though. Yap, for instance, has a reasonably clear picture of how she works, typically starting with a melody that she will note down, and then receiving ideas about potential arrangements and structures by actively listening to other songs that she feels are relevant to what she's working on. She claims to "have to be

constantly absorbing and listening to other people” during this phase of the creative process, after which she will gather all of her musical and lyrical notes and attempt to put them all together.

This part of the process would seem to be the most conscious and methodical portion, but Yap’s description doesn’t bear this out. Instead, she sees herself almost as a conduit for a song that already exists on some level, stating that “if you have a good song, it has its own flow, and I try not to obstruct that flow.” So while she is aware of many of the inputs going into the song as she writes it, there is an aspect of it that remains a mystery even as she creates it.

Masters as well offers a fairly clear portrait of songwriting, though again prefacing it by saying he has no consistent process. In general, though, he says he often begins with a lyric or phrase that he finds compelling, and uses that to determine the rhythm of the song. From that rhythm, he then “start[s] finding where the tune goes after that,” referring to both the melody and structure. Like Yap, this implies that the song is already out there, and that he is discovering it rather than creating it.

McLean also alludes to a lack of control in the creative process, though in a somewhat different way. He mentions that melodies are constantly running through his head—not just while he’s attempting to write songs, but throughout his day-to-day life. “It always seems like a sea of stuff passing through your head,” he says, describing how “different little snippets of melody will creep in and turn into something else,” and that often those snippets will come from pre-existing works.

Given their constant presence, it stands to reason that the vast majority of these melodic segments never turn into songs. That makes sense, given that McLean thinks of songwriting as something separate from coming up with melodies, saying that “sitting down with an instrument and trying to come up with ideas is kind of a structured thing,” as opposed to the more unstructured creation of melodies.

For Samson, songwriting seems to resemble creative writing, usually focussed on the lyrics. He describes concepts for songs coming before the music—wanting to write a song about “video games and small towns and how online gaming is changing small community cultures,” for ex-

ample, which led to the song “Stop Error”—rather than starting from melodies and small phrases. He also mentions using a variety of exercises that resemble ones used in creative writing, such as starting with the first line of a work and using that to create something new before erasing that first line, as well as creating narratives based on other works. At the end of one creatively fallow period, for example, he

...had a couple of days off at the end of a tour, and I went to the Tate gallery there, and there was a big [Edward] Hopper retrospective. And I kind of went in feeling that maybe I was done with writing songs, and I came out thinking “Oh, I’m going to write 12 songs about Edward Hopper paintings.”

The resulting songs were based on his ideas of the narratives behind the paintings, as well as from reading others’ writings on them,<sup>6</sup> with the music following from the concept. For “Stop Error,” for example, the concept led him to consider the nature of video game music and its similarity to certain types of classical music, leading to his borrowing of a melody from Bach.

Bagley, Mangan and Masters also referenced occasionally making use of pre-existing narratives (from real life or otherwise), with Masters stating that they make for “a pretty easy way to write a song, because the story’s already done.” In each of these cases, the music came after the idea for the narrative, and after the lyrics were started.

Hutzulak, on the other hand, expressed a disinterest in narratives in song altogether, making it unlikely that he would ever use a process similar to Samson’s. However, he did use a narrative in one of his pieces, in which he reads an entire children’s story over backing music of his own creation. In that case, he felt the story “seemed to match well with [his] attempt to play the clarinet—this really pathetic music, but very charming,” though he can’t recall whether the music or the idea to use that particular story came first.

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<sup>6</sup>In fact, his research led to an incident of mistaken attribution when he made a note of a phrase from a description of the painting, only to later believe that he had written the phrase himself. As he says, “It wasn’t until long after that I put together that it wasn’t something I had invented.”

While there wasn't a general consensus regarding songwriting—and some of the songwriters were unable to even agree on their own process—there are some commonalities to most of the descriptions. A major one of these is the belief that inspiration can strike at any time, and that the songwriters should be prepared for that. Mangan, Hutzulak, Samson and Yap all directly refer to notebooks (or in Mangan's case, his iPhone) that they use to write down lyrical and musical ideas when they strike, and there is little reason to think that the other three interviewees don't use a similar tool.

This strongly reinforces the notion that pre-existing works play a key role in the creation of new works for these songwriters. Not that everything they write down is taken from artistic or even non-artistic works—Mangan in particular mentions that he's much more inclined to find inspiration in phrases overheard in general conversation. Nor does it mean that those notes will find their way directly into works—while Hutzulak describes every phrase that makes it into one of his songs as “hard-fought”, Mangan says that he takes notes to help with “throwing coal on the fire of inspiration” rather than as direct source material. But it does reinforce Yap's thoughts about the need to constantly take in new experiences, including new artistic works, as a source of inspiration.

Another recurring belief was that of the transformative quality inherent in songwriting—that even conscious attempts to replicate a particular work would end up differing due to the personal idiosyncrasies of a given songwriter. For McLean, this seems to largely be an aspect of performance rather than composition. When he talks about consciously taking on the style of another singer while writing a song, only to have it become his own when he uses his own voice, it follows that he is describing the type of performative and timbral elements that are not currently covered by compositional copyrights. For others, like Yap, it is unclear exactly what they refer to when saying that the personalization just happens, but it is clear that they believe the individual has a profound effect on shaping the musical works they create—which seems at odds with the simultaneous belief that songwriting involves getting out of the way while a song reveals itself.

#### 5.2.4 Artists' views versus theories of creativity

These songwriters, then, tend to agree that creativity is a process of constant observation and reinterpretation, filtering inputs through some personal quality of the songwriter to create something new. How, then, does that view compare to the three schools of creativity?

The idea that there is something inherent in a single creator that makes their work inherently unique seems to fit with the individualist view of creativity, at least at first blush. After all, Bloom's *Anxiety of Influence* doesn't require that artists entirely disconnect themselves from those that came before. While he does at one point state that "Really strong poets can read only themselves" (Bloom, 1973, p. 19), he also says that "weaker talents idealize [while] figures of capable imagination appropriate for themselves," (Bloom, 1973, p. 5) and that "We need to stop thinking of any poet as an autonomous ego, however solipsistic the strongest of poets may be." (Bloom, 1973, p. 91). For him, the important thing was to overwhelm one's influences; to understand and manipulate them so thoroughly that the older works seem like echoes of the new, rather than the other way around.

This notion of starting from a highly influenced position and gradually finding one's own voice is echoed in McLean's description of musical development, where you "start off aping other styles," and then each new style you imitate gets filtered through the ones you have previously adopted until you develop your own unique style.

The difference, though, is that in the view of McLean—as well as Yap, Mangan and Bagley—the process is unconscious. There is no anxiety over the influence, no effort to overpower the artists who came before. In fact, there seemed to be more anxiety over the notion that songwriters could own the melodies that they created, as most of the songwriters believed that unconscious plagiarism was both inevitable and not something to be particularly concerned with. Perhaps that's just evidence that none of them are "strong" artists in the manner that Bloom conceived, or that pop and rock songwriting should be viewed differently from poetry, the area of Bloom's focus. Those with a more traditional view of the arts are certainly likely to agree here. Based



entirely on the songwriters' views, though, Jonathan Lethem's "ecstasy of influence" (2007), with its freewheeling acceptance of quotation, appropriation and recontextualization, seems far more accurate a descriptor than Bloom's anxiety.

Moving, then, to the systems view, the key here would seem to be how the songwriters view their relationship to the domain and to the field. The former of these is obviously important to all of them. Especially for those with less training in music theory, the domain provides what McLean refers to as "reference points" for creating certain musical moods. Whether it's his statement that "the concept of feel for someone trying to write popular music is based on what you've experienced already in terms of what 'feels' are, in terms of other people's music," Bagley's detailed recounting of the precedents and influences on his musical creations, Mangan's vivid description of creativity as "barfing into the world... what you've been eating" or Yap's statement that she needs to be listening to music in order to write her own songs, the importance of the domain on the work of these songwriters is undeniable. Even Hutzulak, who says he has never learned cover songs, admits to taking inspiration from the timelessness of old jazz standards, and while his criticism of modern pop lyrics may seem to isolate him from the current domain in that regard, a reaction against something is still a reaction to it, and still indicates an engagement with that domain.

The field is addressed less directly, but its presence can be read into certain comments. Nakamura and Csikszentmihalyi say that a creative individual who is part of a field "helps peers and the next generation of practitioners to actualize their own creative potential" (Nakamura and Csikszentmihalyi, 2001, p. 341), and in that sense, there are a number of examples of the influence of the field on the songwriters interviewed here.

Yap in particular mentions more than once that listening to the works of other musicians provides her with a sense of permission to try out different musical techniques—the repetition of tones from Bjork or the noise, energy and ferocity of Duchess Says. This seems to be a clear example of a field dictating the contents of the domain. Bagley addresses this same sense of permission when he describes some of his more heavily borrowed works in terms of the output of the Cramps,

using their status as one of the most influential acts in horror rock to legitimize the practice of appropriating entire chord progressions or melodies.

The practice of showing new songs to respected peers before performing them in public is also in keeping with Nakamura and Csikszentmihalyi's view of the field. Masters, after all, believed that the first song he wrote was creative until his peer pointed out that it was too similar to "Heart of Gold," at which point he decided the song was not, in fact, creatively valuable. Samson's experience showing a song to his band only to have them claim it imitated "Sweet Home Alabama" provides another similar example. Granted, he decided that there was actual value in the song, but he still left it up to the band members to "fix" the problem of the perceived similarity.

There is a broader sense of the field that was not addressed in the interviews but that is still important to point out. The systems view does not posit the field as being composed entirely of artists. The concept of the field for popular music by necessity includes critics, audiences, manufacturers of instruments and others more peripheral to the music industry. The tastes of audiences didn't come up in any of these discussions of the songwriting process, and the only time music criticism was raised was by Bagley to point out that at least one Calgary-based critic had often listed certain bands as influences on his sound despite Bagley's never having listened to them. Given the reliance of musicians on audiences for their livelihood, it is not hard to believe that audience reception would be a factor in their creative process, but this was never addressed.

Even still, there does seem to be a strong case that the views and descriptions of creativity offered by these songwriters support the systems view of creativity. All of the songwriters saw themselves as working within a particular domain and placed at least some importance on consuming and understanding what was going on within that realm, and most of them acknowledged at least some role for the field.

Memetics, though, also finds a great deal of support in these artists' accounts. The concept is never mentioned by name, but its view of songs as self-replicating entities that essentially use the human mind as a host or incubator is not out of line with how Yap and McLean speak of unwritten

songs as pre-existing things, stating that the best way to write a song is to stay out of its way, or to see how it develops on its own.

It also finds credence in the way many of the songwriters talk about melodies running through their heads constantly, or popping up with no conscious effort on their part. They don't say that they are constantly creating melodies, but that they are hearing them, that the melodies are appearing to them and that they are selecting the ones that stick out to them for use in other songs. McLean even makes the point that these melodies are recombining and evolving. That he's compelled to share some of them would indicate that those were the melodies most fit for reproduction by the very fact that they compel their transmission.

Even such details as the constant note-taking on the part of the songwriters<sup>7</sup>, the unconscious re-emergence of previously heard melodies, the lack of a clear idea on the part of the songwriters as to where their melodies come from, and anecdotes like Samson's statement that there is a "Sarah Harmer song that I heard and have never stopped trying to write" can all be explained by viewing humans as being driven to imitate, and songs as self-replicating entities.

It seems, then, that with the exception of the entirely individualistic view of creativity (which, as mentioned in the literature review, has exceptionally little support in academic circles), support can be found in the interviews for all three schools of creativity theory. That said, the prevalence of borrowing in these songwriters' creative process, along with the songwriters' openness to discussing that borrowing and their general acceptance of it as a practice does give more credence to those views that see the creator not as what Richards described as a "lone genius... an odd and solitary figure who functions best alone," but as someone constantly consuming, imitating, altering and interacting with other creative works.

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<sup>7</sup>Memetics does not require that the human brain be the host to the memes, and sees tools that aid in the reproduction of ideas as part of the memetic ecosystem (Blackmore, 2000).

### 5.2.5 Artists views versus the law

Unlike the United States' copyright legislation, Canada's Copyright Act has no preamble. This means there is no equivalent to the "progress clause" discussed in the literature review, which clarifies the intent of the American lawmakers in establishing copyright "to promote the progress of science and useful arts," and makes a discussion of the philosophical underpinnings of Canada's copyright law more difficult. We can read which forms of creativity are protected and how those protections work, but discussions of why are necessarily hampered.

There are some indicators, though. As mentioned in the literature review, the Supreme Court of Canada's decision in *Theberge v. Galerie d'Art du Petit Champlain Inc.* does reference a balance between public access and an economic incentive to create, though this is the court's interpretation rather than a legislative fact (Vaver, 1983). Within the actual law, one indicator is the preamble to Bill C-11, the most recent amendment to Canada's copyright framework, which describes the Copyright Act as "an important marketplace framework law and cultural policy instrument that, through clear, predictable and fair rules, supports creativity and innovation and affects many sectors of the knowledge economy;" and refers to a desire to promote "culture and innovation, competition and investment in the Canadian economy" and enable the country's participation "in a knowledge economy driven by innovation and network connectivity" (Copyright Modernization Act, 2012).

This language clearly establishes the Copyright Modernization Act, as C-11 is otherwise known, as supporting a primarily economic view of copyright. Its goal is not the progress of culture as in the American wording, nor is it for "the encouragement of Learning" as the original Statute of Anne framed its goals—this most recent modernization is to make Canada more economically viable by ensuring it affords the same protection to intellectual property as other nations in the "knowledge economy."

While this doesn't explicitly clarify the view of creativity underlying Canada's copyright legislation, it does run counter to some of the views expressed by the songwriters in this project. Most obviously, it is difficult to reconcile these economic goals with several songwriters' beliefs that

songs—and particularly the individual elements of songs—are not something that can be owned. When Samson says he’s “not entirely trusting the idea of ownership of any kind of art” and that he believes “rights to that work belong to the interpreters of the work as much as the inventors of the work,” that can only be a fundamental disconnect with the copyright acts’ goal of protecting the economic rights of rightsholders.<sup>8</sup> And while this view is not rigidly held by all the interviewees—it even Samson himself later criticizes Bill C-11 for “neglecting that whole idea of how writers and publishers are supposed to be paid”—it at least points towards a difference of opinion as to which rights need to be protected by copyright.

As far as the theory of creativity underlying the copyright act, this is again a matter of interpretation, but certain interpretations do seem more likely. The Act doesn’t explicitly align itself with the “lone genius” view of creativity, but it does implicitly distance itself from less individualistic models by limiting artists’ ability to borrow from other works. One could argue that the existence of exceptions for fair dealing shows a belief in the importance of an accessible domain,<sup>9</sup> but even if this is the case, the exceptions only apply in very limited circumstances and must be proven in court; they are clearly secondary to the rights of individuals. This is very different from the systems model of creativity, in which the creative individual is only one part of a three-part system, with none of the three parts inherently more important than the others. As for the memetic view, copyright law—which legislates against the ability of the public to reproduce a work without authorization—could not be more antithetical to the notion of humans as being defined by their ability (and urge) to imitate.

In short, then, the legal view of copyright in Canada seems to be about the opposite of the view espoused by the songwriters interviewed for this project. While the Copyright Act does not make its assumptions explicit, it leans towards individualism and downplays the importance of creative borrowing, relegating fair dealing to explicitly defined areas that still must be defended

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<sup>8</sup>Due to Canada’s official bilingualism, Bill C-11 refers to “copyright” in English, and “*le droit d’auteur*” or authors’ rights in French. However, the preamble is clear that it is the rightsholder and not necessarily the author whose economic interests are the focus of the Act.

<sup>9</sup>Not to be confused with a public domain.

in court. The songwriters, on the other hand, view borrowing as an essential part of the creative process, particularly in the early stages of one's artistic development. While there is an element of traditional, individualistic creativity in the songwriters' descriptions of their creative process, there is at least an equal claim to other schools of creative thought that pose a significant challenge to that view of the lone genius.

However, more important than the apparent theoretical differences between these songwriters and Canada's copyright legislators are the differences in practice. There wasn't a single artist interviewed who believed that borrowing didn't play some role in their work, and most could actually identify many elements of their songs that could be considered legally questionable—at least questionable enough to end up in court, even if a fair dealing defence could actually succeed.

This reflects the fact that these artists simply do not believe that copyright legislation is for them. As has been discussed, they view copyright as an economic tool (justifiably so, given the framing of a bill like C11), and do not see themselves as operating on a scale where such a tool is a realistic benefit or a realistic deterrent. Even for those musicians whose livelihood comes from their songwriting, their creativity is not viewed as part of an economic process, and this is perhaps the biggest gap between legislation ostensibly for the benefits of creators (at least as far as public perception is concerned), and the views of those creators.

## Chapter 6

### Conclusion: A missing voice

At the risk of belabouring the point, this thesis has not aimed to resolve the myriad issues that arise when copyright, creativity and songwriting intersect. Rather, it has been aimed at pointing out one fact: That songwriters have much to contribute to the current debates surrounding copyright law, and at least some of those contributions challenge assumptions about creativity implicit in current legislation. And while the groups that represent the songwriters do have a platform in the form of lobby groups that participate in the legislative process, the actual voices of songwriters are largely absent, even in the academic realm.

This argument is not based on songwriters' encyclopaedic knowledge of copyright law, nor is it a reflection of their economic might. It rests on the fact that, at its core, copyright law is a limitation on the creative options available to artists—restrictions that have been justified through arguments both economical and moral, and which may prove entirely valid. But before asking the question of what artists *should* be allowed to do, creatively speaking, it seems important to understand what artists are already doing.

This is particularly true when it comes to issues of creative borrowing. While recent works on digital sampling—likely the most straightforward form of borrowing though still a complicated issue in its own right—have started to correct the underrepresentation of artists' voices (McLeod & DiCola, 2011), there are many other ways that artists can borrow from other works. Some are subtle and some seem obvious, but there is a very real danger in academics and legislators presuming to understand those artistic practices based on their own assumptions. It is not uncommon for popular critics or even academics to ascribe certain influences to particular artists, but without actually speaking to the artists, creative practices may be overstated, misunderstood or missed entirely, and that is counterproductive in discussions that aim to provide a clearer picture of the creative process.

The songwriters interviewed for this thesis may not prove to be a representative sample of songwriters in general. They may not even be representative of the quite limited category of independent western Canadian songwriters working in the broadly defined indie rock genre (and it is certainly not clear that all seven songwriters would agree to that generic descriptor, either). The fact that there is no baseline to compare them to is reflective of the way that the actual voices of the songwriters have been left out of the conversation. Putting aside issues of generalizability, this thesis has tried to show the sorts of insights that can be gained through speaking to the people who are actually engaged in creative practices, insight that could only be broadened through further projects along the same lines.

## 6.1 On copyright

When asked directly about copyright law, it was clear that these songwriters were largely unfamiliar with the details of Canada's Copyright Act. More, it was clear that copyright law was not a major factor in the way they carried out their practices, as it was seen less as a legal issue than an economic one that would only become a real concern if they were operating on a much larger scale.

If this is reflective of independent songwriters as a whole, it provides a very interesting problem for legislators. The tie between copyright and economics has existed from the very first copyright laws, but it has usually been framed as being for the benefit of all artists—that without the legal protections afforded by copyright, artists would not have the economic incentive to create, and new works would not be made. If these songwriters view copyright's protections as largely irrelevant to their practices but are nevertheless creating new works, it would indicate a disconnect between the purported aims of much copyright legislation (though not necessarily all, as some, like Canada's, don't expressly state the philosophical underpinnings of the laws) and the reality of creative practice.

The songwriters' views may also point towards other frameworks that could accomplish some



of the same aims as copyright. It certainly seems that other forces influence the extent to which songwriters are willing to engage in acts of creative borrowing, and that songwriters consider certain elements of songs to be more or less deserving of protection than others. If social, moral and even aesthetic forces already have a role in regulating artistic behaviour, a more full understanding of how those forces interact can only be beneficial, and such an understanding can only come from talking to songwriters about their beliefs and practices.

It is true that songwriters are only one of the stakeholders in the copyright discussion. The public benefit of new work and the economic benefits to rightsholders certainly need to be considered, but songwriters and other artists are in the fairly unique position of overlapping with both of those groups. Better understanding their views and practices will lead to a more complex and more complete view of how those groups interact, and how they differ.

## 6.2 On creativity

On an even more basic level, when legislating creativity, it seems important to have an understanding of how creativity works. This is an issue that academics have long debated, with many engaging theories about how humans can create something new. The discussion is thorough enough that even a phrase like “create something new” is impossible to use without first accepting a host of underlying assumptions.

The problem of creativity, then, is one that is not likely to be resolved soon. But again, our understanding of it can only be enriched by talking directly with those who make it their business to engage in creative activities on a regular basis. Certainly, projects that examine past examples of creativity either through analysis of the works themselves (Dunne, 2000) or through historical records of those works’ creation (McIntyre, 2006; Gruber & Davis, 1988; Feldman, 1988) have their place, and philosophical exercises (Bloom, 1973; Becker, 1984; Csikszentmihalyi, 1988) have provided countless insights over the years, but without talking to artists or even observing them as they create, it is nearly impossible to reconcile that theory with practice.

There is no guarantee that such interviews would necessarily clarify our understanding of creativity. The songwriters interviewed for this project by no means presented a unified vision of the creative process, and their descriptions often emphasized the haziness of the process, even to the point of self-contradiction. Muddying the nature of creativity is hardly a bad thing, though. Traditional views of isolated geniuses or divine inspiration were far simpler than current theories like the systems model of creativity or memetics, but the complexity of those latter views is a large part of what makes them compelling: they reflect the songwriters' views of themselves as parts in a broader creative landscape, influenced by and influencing those around them.

These songwriters certainly tend to view originality differently from the public at large, with many of them able to isolate piece-by-piece the borrowed elements that they reconstituted into a new work. If it turns out that much of songwriting (and possibly other artistic endeavours) boils down to recontextualizing elements rather than creating them from scratch, and there is considerable theoretical and practical evidence to suggest that is the case (Sternberg, 1988; Perfect & Stark, 2008; Lessig, 2008), then we may have to admit that copyright law is based upon outdated philosophical assumptions.

### 6.3 Next steps

Digital sampling may be the most obvious way that contemporary songwriters reuse and build upon the work of artists who came before them, but it is far from the only one. As this thesis has shown, songwriters have many ways of using other works in their creative process without the presence of those other works necessarily being obvious in the finished product. Even in the limited sample interviewed for this project, the songwriters borrowed phrases from technical writing and titles from unproduced films, included lyrical allusions to films and musical references to other songs. They re-used song structures, unconsciously borrowed melodies, transposed chord changes and imitated vocal phrasings. They tried to capture particular atmospheres or energy, borrowed rhythms and lifted melodies from the public domain. They even found ways to take inspiration

from visual art, philosophy, film and political rhetoric, with none of this borrowing striking the songwriters as at all unusual.

If we hope to improve our understanding of the creative process in order to better understand how to legislate creativity, then speaking to artists about these practices is essential. Further study with larger, more disparate groups of musicians—songwriters working in a wider variety of genres, from broader geographical locations, of different backgrounds and different economic standings—can only enrich our understanding. Whether the goal is a more accurate theoretical foundation, more practical policy or even just further fodder for philosophical discussion, artists’ own views and voices must take on a more central role in the conversation.

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